



System Impact Study for Long-Term Firm Transmission Service

MISO Project: A727
OASIS Reference #: 88572081

Revised FINAL REPORT

12/13/2019

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MISO Project A727 (TSR #88572081)**1. Summary**

Yearly Firm transmission service has been requested under the MISO's Open Access Transmission and Energy Markets Tariff.

The transmission service request 88572081 is seeking to reserve up to 200 MW of yearly, firm, network service from MP Bison units 2 and 3 to MP.MP.

MISO System Impact Study A727

		Transactions			
Point of Receipt	Point of Delivery	OASIS No.	MW	Begin	End
MP.Bison 2 & 3	MP.MP	MISO 88572081	200	01/1/2023	01/1/2044

Analysis has been performed for the outer year conditions to assess the impact of the proposed transfer on the transmission system. Even though there have not been any constraints identified for these scenarios, the models assume that the upgrades are in place on that HVDC for the extra 200 MW on its 550 MW capacity. Therefore, a Facility Study is required for this upgrade and in order to provide accurate cost estimates. The TSR can be granted conditional once the upgrades are in place, which will be determined by the facility study. Once the TSR is approved, it grants transmission right from one end of the HVDC (West) to the other (East). The TSR was modeled in a way where it was sourcing 200MW from the Bison 2 and 3 generators, and sinking into the east side of the HVDC in MP.MP in order to capture any violations on the eastern side of the HVDC on the AC system.

MISO Project A727 (TSR #88572081)

2. Study Objectives

The objectives of this study are to:

- Identify MISO system constraints created or aggravated by the requested service.
- Identify non-MISO system constraints created or aggravated by the requested service, especially constraints on impacted systems that are not on the contract path.
- Identify potential system upgrades to mitigate any identified MISO-system constraints.

The study procedure includes:

- Use of Network Analysis to identify steady-state thermal and voltage violations on transmission facilities and flowgate violations.
- The relevant MISO, Reliability Region, and Control Area reliability criteria are used to identify such violations.
- The network analysis includes determining the availability of rollover rights.
- Use of Flow based Analysis to determine negative AFC on constrained Facilities.

MISO Project A727 (TSR #88572081)**3. Model Used for Study**

The models for this study are developed using Model on Demand (MOD). This model is modified to reflect the most current information available from an Ad Hoc Study Group of potentially affected Transmission Owners.

Scenario 1 (Summer Peak Out year term 2023)**Base Case With Confirmed + Study Reservations**

The 2023 summer peak model is used for this scenario. The Confirmed transmission reservations for the study period not already included in the base case were added to the model based on queue priority. The schedule for the 2 poles of the HVDC lines being studied were set to 550 MW in the pre-case and set to 750 MW in the post case. Generation was being sourced from the Bison 2 and 3 units, and flowing through the HVDC and sinking into the eastern side in the MP.MP area units.

The following Confirmed + Study reservations, not in any particular order, have been included for this Scenario:

OASIS Ref#	POR	POD	CAPACITY GRANTED	SERVICE	CLASS	START_TIME	STOP_TIME
79258527	MHEB	NSP	100	YEARLY	FIRM	2015-05-01 00:00:00 ES	2020-06-01 00:00:00 ES
80600865	MHEB	NSP	100	YEARLY	FIRM	2016-05-01 00:00:00 ES	2021-06-01 00:00:00 ES
81823546	MHEB	NSP	100	YEARLY	FIRM	2016-11-01 00:00:00 ES	2021-11-01 00:00:00 ES
87902493	MHEB	NSP	8	YEARLY	FIRM	2019-11-01 00:00:00 ES	2024-11-01 00:00:00 ES
80142548	MHEB	WPS	100	YEARLY	FIRM	2030-06-01 00:00:00 ES	2035-06-01 00:00:00 ES
80142558	MHEB	WPS	100	YEARLY	FIRM	2030-06-01 00:00:00 ES	2035-06-01 00:00:00 ES
80142561	MHEB	WPS	100	YEARLY	FIRM	2030-06-01 00:00:00 ES	2035-06-01 00:00:00 ES
88698890	MHEB	OTP	84	YEARLY	FIRM	2023-06-01 00:00:00 ES	2028-06-01 00:00:00 ES
76802201	MP.HVDCW	MP.HVDCE	15	YEARLY	FIRM	2013-12-01 00:00:00 ES	2026-12-01 00:00:00 ES
76802202	MP.HVDCW	MP.HVDCE	10	YEARLY	FIRM	2013-12-01 00:00:00 ES	2026-12-01 00:00:00 ES
76802203	MP.HVDCW	MP.HVDCE	10	YEARLY	FIRM	2013-12-01 00:00:00 ES	2026-12-01 00:00:00 ES
76802204	MP.HVDCW	MP.HVDCE	10	YEARLY	FIRM	2013-12-01 00:00:00 ES	2026-12-01 00:00:00 ES
76802209	MP.HVDCW	MP.HVDCE	227	YEARLY	FIRM	2010-01-01 00:00:00 ES	2036-01-01 00:00:00 ES
76802216	MP.HVDCW	MP.HVDCE	228	YEARLY	FIRM	2010-01-01 00:00:00 ES	2037-01-01 00:00:00 ES
78979856	MP.HVDCW	MP.HVDCE	50	YEARLY	FIRM	2013-11-01 00:00:00 ES	2026-12-01 00:00:00 ES

MISO Project A727 (TSR #88572081)

Scheduling Rights:

App Ref#	Resource Name	POR	POD	CAPACITY GRANTED	START_TIME	STOP_TIME
1072	MANITOBA HYDRO	MHEB	GRE	200	2019-03-28 00:00:00 ES	2024-11-01 00:00:00 ES
1092	MMPA.MHEB	MHEB	NSP	110	2022-06-01 00:00:00 ES	2030-06-01 00:00:00 ES
1095	MPM.MHEB	MHEB	MP	383	2020-06-01 00:00:00 ES	2037-06-01 00:00:00 ES
1107	NSPP.MHEB	MHEB	NSP	742	2019-03-28 00:00:00 ES	2025-05-01 00:00:00 ES
1131	WPSM.MHEB	MHEB	WPS	108*	2015-04-30 00:00:00 ES	2020-06-01 00:00:00 ES
1095	MPM.MHEB	MHEB	WPS	50*	2016-06-01 00:00:00 ES	2020-06-01 00:00:00 ES

*TSRs with rollover rights

Scenario 2 (Shoulder Peak Out year term 2023)**Base Case With Confirmed + Study Reservations**

The 2023 Shoulder peak model is used for this scenario. The Confirmed transmission reservations for the study period not already included in the base case were added to the model based on queue priority. The schedule for the 2 poles of the HVDC lines being studied were set to 550 MW in the pre-case and set to 750 MW in the post case. Generation was being sourced from the Bison 2 and 3 units, and flowing through the HVDC and sinking into the eastern side in the MP.MP area units.

The following Confirmed + Study reservations, not in any particular order, have been included for this Scenario:

OASIS Ref#	POR	POD	CAPACITY GRANTED	SERVICE	CLASS	START_TIME	STOP_TIME
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81823546	MHEB	NSP	100	YEARLY	FIRM	2016-11-01 00:00:00 ES	2021-11-01 00:00:00 ES
87902493	MHEB	NSP	8	YEARLY	FIRM	2019-11-01 00:00:00 ES	2024-11-01 00:00:00 ES
80142548	MHEB	WPS	100	YEARLY	FIRM	2030-06-01 00:00:00 ES	2035-06-01 00:00:00 ES
80142558	MHEB	WPS	100	YEARLY	FIRM	2030-06-01 00:00:00 ES	2035-06-01 00:00:00 ES
80142561	MHEB	WPS	100	YEARLY	FIRM	2030-06-01 00:00:00 ES	2035-06-01 00:00:00 ES
88698890	MHEB	OTP	84	YEARLY	FIRM	2023-06-01 00:00:00 ES	2028-06-01 00:00:00 ES
76802201	MP.HVDCW	MP.HVDCE	15	YEARLY	FIRM	2013-12-01 00:00:00 ES	2026-12-01 00:00:00 ES
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76802216	MP.HVDCW	MP.HVDCE	228	YEARLY	FIRM	2010-01-01 00:00:00 ES	2037-01-01 00:00:00 ES
78979856	MP.HVDCW	MP.HVDCE	50	YEARLY	FIRM	2013-11-01 00:00:00 ES	2026-12-01 00:00:00 ES

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App Ref#	Resource Name	POR	POD	CAPACITY GRANTED	START_TIME	STOP_TIME
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1092	MMPA.MHEB	MHEB	NSP	110	2022-06-01 00:00:00 ES	2030-06-01 00:00:00 ES
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1131	WPSM.MHEB	MHEB	WPS	108*	2015-04-30 00:00:00 ES	2020-06-01 00:00:00 ES
1095	MPM.MHEB	MHEB	WPS	50*	2016-06-01 00:00:00 ES	2020-06-01 00:00:00 ES

* TSRs with rollover rights

4. Contingencies and Flowgates

The MISO contingency, monitored element and flowgate lists were used for the contingency analysis. These include SERC/RFC/MRO contingencies and flowgates. *Single pole contingencies were considered in the control area MP around the studied TSR. Bipole contingencies are not considered in this study.* When evaluating these contingencies, all branches greater than 60kV were monitored in the following control areas: MDU, OTP, GRE, XEL, MP, DPC, MPC, SMP, WAPA, SPC, MH, and ATC - WPS. Branch loadings were monitored using continuous ratings for normal conditions, and emergency ratings for contingencies. A 3% TDF cutoff was used for the OTDF flowgates and branch overloads. A 5% cutoff TDF was used for PTDF flowgates.

5. Study Methodology***Network Analysis***

The study was conducted employing MISO Day 2 TSR Study Methodology. The study approach involves an N-1, AC contingency analysis and a flowgate analysis that examine the contingency and flowgate violations for the requested transfer. The main procedures in the Day-Two TSR study tool are as follows:

1. Filter potential constraints based on DC analysis.
2. For each pair of filtered Monitored Element (ME) and Contingency Element (CE), Monitored Element Sensitivity Analysis (Sensitivity Analysis) is performed. Generating units that are contributing the most flows and those that are contributing to the most counter-flows on any potential constraint are identified.
3. Analyze generation redispatch for each filtered potential constraints with its associated sensitive generators.

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Flow-Based Analysis

OASIS Automation automatically processes requests for transmission service using flow-based techniques to determine AFC on constrained facilities. MISO reviewed the automation results to determine if the AFC on any of the constrained facilities is negative. Distribution factors are computed for MISO and non-MISO flowgates according to each flowgate's defined type – PTDF or OTDF. A transfer distribution factor cutoff of 3% concerning OTDF flowgates and 5% concerning PTDF flowgates are used in the Flow-Base Analysis (AFC).

MISO Project A727 (TSR #88572081)**6. Results**

The results of the simulations are listed below.

6.1 Transaction Simulation – Scenario 1 (Summer Peak 2023)

The following “Source/Sink”, definitions were used to simulate the study request from POR MP.Bison 2 & 3 to POD MP.MP:

- Source: MASKED
- Sink: MASKED

The following constraints are identified:

Monitored Branch	Contingency	Contr ol Area	Rating MVA	Post Transfer, Post Cont MVA	Pre Transfe r Post Cont MVA	Impac t MVA	DF	FCITC
None								

Table 6.1: 2023 Summer peak case violations

6.2 Transaction Simulation – Scenario 1 (Shoulder Peak 2023)

The following “Source/Sink”, definitions were used to simulate the study request from POR MP.Bison 2 & 3 to POD MP.MP:

- Source: MASKED
- Sink: MASKED

The following constraints are identified:

Monitored Branch	Contingency	Contr ol Area	Rating MVA	Post Transfer, Post Cont MVA	Pre Transfe r Post Cont MVA	Impac t MVA	DF	FCITC
None								

Table 6.2: 2023 Shoulder peak case violations

6.4 AFC analysis

AFC analysis does not apply in this case.

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7. Conclusion:

Analysis has been performed for the outer year conditions to assess the impact of the proposed transfer on the transmission system. Even though there have not been any constraints identified for these scenarios, the models assume that the upgrades are in place on that HVDC for the extra 200 MW on its 550 MW capacity. Therefore, a Facility Study is required for this upgrade and in order to provide accurate cost estimates. The TSR can be granted conditional once the upgrades are in place, which will be determined by the facility study. Once the TSR is approved, it grants transmission right from one end of the HVDC (West) to the other (East). The TSR was modeled in a way where it was sourcing 200MW from the Bison 2 and 3 generators, and sinking into the east side of the HVDC in MP.MP in order to capture any violations on the eastern side of the HVDC on the AC system.



System Impact Study for Long-Term Firm Transmission Service

MISO Project: A746
OASIS Reference #: 91365462

FINAL REPORT

07/23/2020

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7. CONCLUSION: 9

MISO Project A746 (TSR #91365462)**1. Summary**

Yearly Firm transmission service has been requested under the MISO's Open Access Transmission and Energy Markets Tariff.

The transmission service request 91365462 is seeking to reserve up to 150 MW of yearly, firm, network service from MP Bison units 2 and 3 to MP.MP.

MISO System Impact Study A746

		Transactions			
Point of Receipt	Point of Delivery	OASIS No.	MW	Begin	End
MP.Bison 2 & 3	MP.MP	MISO 91365462	150	01/1/2023	01/1/2044

Analysis has been performed for the outer year conditions to assess the impact of the proposed transfer on the transmission system. Even though there have not been any constraints identified for these scenarios, the models assume that the upgrades are in place on that HVDC for the extra 150 MW on its 750 MW capacity. Therefore, a Facility Study is required for this upgrade and in order to provide accurate cost estimates. The TSR can be granted conditional once the upgrades are in place, which will be determined by the facility study. Once the TSR is approved, it grants transmission right from one end of the HVDC (West) to the other (East). The TSR was modeled in a way where it was sourcing 150MW from the Bison 2 and 3 generators, and sinking into the east side of the HVDC in MP.MP in order to capture any violations on the eastern side of the HVDC on the AC system.

MISO Project A746 (TSR #91365462)

2. Study Objectives

The objectives of this study are to:

- Identify MISO system constraints created or aggravated by the requested service.
- Identify non-MISO system constraints created or aggravated by the requested service, especially constraints on impacted systems that are not on the contract path.
- Identify potential system upgrades to mitigate any identified MISO-system constraints.

The study procedure includes:

- Use of Network Analysis to identify steady-state thermal and voltage violations on transmission facilities and flowgate violations.
- The relevant MISO, Reliability Region, and Control Area reliability criteria are used to identify such violations.
- The network analysis includes determining the availability of rollover rights.
- Use of Flow based Analysis to determine negative AFC on constrained Facilities.

MISO Project A746 (TSR #91365462)**3. Model Used for Study**

The models for this study are developed using Model on Demand (MOD). This model is modified to reflect the most current information available from an Ad Hoc Study Group of potentially affected Transmission Owners.

Scenario 1 (Summer Peak Out year term 2023)**Base Case With Confirmed + Study Reservations**

The 2023 summer peak model is used for this scenario. The Confirmed transmission reservations for the study period not already included in the base case were added to the model based on queue priority. The schedule for the 2 poles of the HVDC lines being studied were set to 750 MW in the pre-case and set to 900 MW in the post case. Generation was being sourced from the Bison 2 and 3 units, and flowing through the HVDC and sinking into the eastern side in the MP.MP area units.

The following Confirmed + Study reservations, not in any particular order, have been included for this Scenario:

OASIS Ref#	POR	POD	CAPACITY GRANTED	SERVICE	CLASS	START_TIME	STOP_TIME
79258527	MHEB	NSP	100	YEARLY	FIRM	2015-05-01 00:00:00 ES	2020-06-01 00:00:00 ES
80600865	MHEB	NSP	100	YEARLY	FIRM	2016-05-01 00:00:00 ES	2021-06-01 00:00:00 ES
81823546	MHEB	NSP	100	YEARLY	FIRM	2016-11-01 00:00:00 ES	2021-11-01 00:00:00 ES
87902493	MHEB	NSP	8	YEARLY	FIRM	2019-11-01 00:00:00 ES	2024-11-01 00:00:00 ES
80142548	MHEB	WPS	100	YEARLY	FIRM	2030-06-01 00:00:00 ES	2035-06-01 00:00:00 ES
80142558	MHEB	WPS	100	YEARLY	FIRM	2030-06-01 00:00:00 ES	2035-06-01 00:00:00 ES
80142561	MHEB	WPS	100	YEARLY	FIRM	2030-06-01 00:00:00 ES	2035-06-01 00:00:00 ES
88698890	MHEB	OTP	84	YEARLY	FIRM	2023-06-01 00:00:00 ES	2028-06-01 00:00:00 ES
76802201	MP.HVDCW	MP.HVDCE	15	YEARLY	FIRM	2013-12-01 00:00:00 ES	2026-12-01 00:00:00 ES
76802202	MP.HVDCW	MP.HVDCE	10	YEARLY	FIRM	2013-12-01 00:00:00 ES	2026-12-01 00:00:00 ES
76802203	MP.HVDCW	MP.HVDCE	10	YEARLY	FIRM	2013-12-01 00:00:00 ES	2026-12-01 00:00:00 ES
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88572081	MP.HVDCW	MP.HVDCE	200	YEARLY	FIRM	2023-01-01 00:00:00 ES	2044-01-01 00:00:00 ES

MISO Project A746 (TSR #91365462)**Scheduling Rights:**

App Ref#	Resource Name	POR	POD	CAPACITY GRANTED	START_TIME	STOP_TIME
1072	MANITOBA HYDRO	MHEB	GRE	200	2019-03-28 00:00:00 ES	2024-11-01 00:00:00 ES
1092	MMPA.MHEB	MHEB	NSP	110	2022-06-01 00:00:00 ES	2030-06-01 00:00:00 ES
1095	MPM.MHEB	MHEB	MP	383	2020-06-01 00:00:00 ES	2037-06-01 00:00:00 ES
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1131	WPSM.MHEB	MHEB	WPS	108*	2015-04-30 00:00:00 ES	2020-06-01 00:00:00 ES
1095	MPM.MHEB	MHEB	WPS	50*	2016-06-01 00:00:00 ES	2020-06-01 00:00:00 ES

*TSRs with rollover rights

Scenario 2 (Shoulder Peak Out year term 2023)**Base Case With Confirmed + Study Reservations**

The 2023 Shoulder peak model is used for this scenario. The Confirmed transmission reservations for the study period not already included in the base case were added to the model based on queue priority. The schedule for the 2 poles of the HVDC lines being studied were set to 750 MW in the pre-case and set to 900 MW in the post case. Generation was being sourced from the Bison 2 and 3 units, and flowing through the HVDC and sinking into the eastern side in the MP.MP area units.

The following Confirmed + Study reservations, not in any particular order, have been included for this Scenario:

OASIS Ref#	POR	POD	CAPACITY GRANTED	SERVICE	CLASS	START_TIME	STOP_TIME
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MISO Project A746 (TSR #91365462)**Scheduling Rights:**

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1092	MMPA.MHEB	MHEB	NSP	110	2022-06-01 00:00:00 ES	2030-06-01 00:00:00 ES
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1095	MPM.MHEB	MHEB	WPS	50*	2016-06-01 00:00:00 ES	2020-06-01 00:00:00 ES

* TSRs with rollover rights

4. Contingencies and Flowgates

The MISO contingency, monitored element and flowgate lists were used for the contingency analysis. These include SERC/RFC/MRO contingencies and flowgates. *Single pole contingencies were considered in the control area MP around the studied TSR. Bipole contingencies are not considered in this study.* When evaluating these contingencies, all branches greater than 60kV were monitored in the following control areas: MDU, OTP, GRE, XEL, MP, DPC, MPC, SMP, WAPA, SPC, MH, and ATC - WPS. Branch loadings were monitored using continuous ratings for normal conditions, and emergency ratings for contingencies. A 3% TDF cutoff was used for the OTDF flowgates and branch overloads. A 5% cutoff TDF was used for PTDF flowgates.

5. Study Methodology***Network Analysis***

The study was conducted employing MISO Day 2 TSR Study Methodology. The study approach involves an N-1, AC contingency analysis and a flowgate analysis that examine the contingency and flowgate violations for the requested transfer. The main procedures in the Day-Two TSR study tool are as follows:

1. Filter potential constraints based on DC analysis.
2. For each pair of filtered Monitored Element (ME) and Contingency Element (CE), Monitored Element Sensitivity Analysis (Sensitivity Analysis) is performed. Generating units that are contributing the most flows and those that are contributing to the most counter-flows on any potential constraint are identified.
3. Analyze generation redispatch for each filtered potential constraints with its associated sensitive generators.

MISO Project A746 (TSR #91365462)

Flow-Based Analysis

OASIS Automation automatically processes requests for transmission service using flow-based techniques to determine AFC on constrained facilities. MISO reviewed the automation results to determine if the AFC on any of the constrained facilities is negative. Distribution factors are computed for MISO and non-MISO flowgates according to each flowgate's defined type – PTDF or OTDF. A transfer distribution factor cutoff of 3% concerning OTDF flowgates and 5% concerning PTDF flowgates are used in the Flow-Base Analysis (AFC).

MISO Project A746 (TSR #91365462)**6. Results**

The results of the simulations are listed below.

6.1 Transaction Simulation – Scenario 1 (Summer Peak 2023)

The following “Source/Sink”, definitions were used to simulate the study request from POR MP.Bison 2 & 3 to POD MP.MP:

- Source: MASKED
- Sink: MASKED

The following constraints are identified:

Monitored Branch	Contingency	Control Area	Rating MVA	Post Transfer, Post Cont MVA	Pre Transfer Post Cont MVA	Impact MVA	DF	FCITC
None								

Table 6.1: 2023 Summer peak case violations

6.2 Transaction Simulation – Scenario 1 (Shoulder Peak 2023)

The following “Source/Sink”, definitions were used to simulate the study request from POR MP.Bison 2 & 3 to POD MP.MP:

- Source: MASKED
- Sink: MASKED

The following constraints are identified:

Monitored Branch	Contingency	Control Area	Rating MVA	Post Transfer, Post Cont MVA	Pre Transfer Post Cont MVA	Impact MVA	DF	FCITC
None								

Table 6.2: 2023 Shoulder peak case violations

6.4 AFC analysis

AFC analysis does not apply in this case.

MISO Project A746 (TSR #91365462)

7. Conclusion:

Analysis has been performed for the outer year conditions to assess the impact of the proposed transfer on the transmission system. Even though there have not been any constraints identified for these scenarios, the models assume that the upgrades are in place on that HVDC for the extra 150 MW on its 750 MW capacity. Therefore, a Facility Study is required for this upgrade and in order to provide accurate cost estimates. The TSR can be granted conditional once the upgrades are in place, which will be determined by the facility study. Once the TSR is approved, it grants transmission right from one end of the HVDC (West) to MP load through the HVDC. The TSR was modeled in a way where it was sourcing 150MW from the Bison 2 and 3 generators, and sinking into the east side of the HVDC in MP.MP in order to capture any violations on the eastern side of the HVDC on the AC system.



Facility Study for Long-Term Firm Transmission Service

MISO Project: **F118**
OASIS Reference #: **90481026, 95418167, 91365462**

FINAL REPORT

4/25/2023

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Minnesota Power

Square Butte HVDC Upgrade

Facilities Study Report – MISO Project A727/A746/F118



Christian Winter
April 2023

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Section 1: Project Overview

The purpose of this Facilities Study is to identify the scope, estimated cost, and timing of upgrades necessary on the existing Square Butte HVDC System in order to accommodate MISO Project F118, which is associated with Transmission Service Requests #90481026 & #95418167 (Project A727) and #91365462 (Project A746). To facilitate these Transmission Service Requests (TSRs), the existing Square Butte HVDC System would need to be modernized and its capacity would need to be increased by up to 350 MW to a total capability of 900 MW (the “HVDC Upgrade Project”). The HVDC Upgrade Project will consist of three general categories of upgrades:

1. **Converter Station Replacement** – Existing 550 MW converter stations interconnected to the AC transmission system at the Arrowhead and Square Butte East Substations will be replaced with increased capability to accommodate the TSRs. Both converter stations are 45+ years old and in need of modernization with or without the capacity increase. Minnesota Power, as the HVDC Owner, has determined that the converter station technology will also be changed from line commutated converter (LCC) to voltage source converter (VSC) technology, and that future expansion capability beyond 900 MW will be incorporated into the initial design of the new VSC HVDC converter stations.
2. **Transmission Line Modifications** – Modifications will be necessary to increase the capacity of the existing 465-mile HVDC transmission line in order to accommodate increased power flow associated with the TSRs.
3. **AC Interconnection Facilities** – The new VSC HVDC converter stations cannot be retrofitted into the existing converter station buildings, requiring that they be constructed on a new site nearby. Additional AC interconnection facilities must be constructed to re-connect the new converter stations to the existing transmission system near the existing points of interconnection.

The scope and estimated costs of these upgrades are discussed in subsequent sections of this report. The anticipated schedule for completing the upgrades is discussed in Section 6. The total anticipated cost of the HVDC Upgrade Project, along with the amount to be assigned to each TSR, is summarized in Table 1 below. Costs are presented in 2022 dollars.

HVDC 900 MW Upgrade <i>Project #A727 = 200 MW</i> <i>Project #A746 = 150 MW</i>	Estimated Total HVDC Upgrade Project Cost	Amount Assigned to Project #A727	Amount Assigned to Project #A746
Converter Station Replacement	\$ 705,000,000	\$ 165,000,000	\$ 123,000,000
Interconnections to AC System	\$ 115,000,000	\$ 15,000,000	\$ 11,000,000
Transmission Line Modification	\$ 58,000,000	\$ 25,000,000	\$ 33,000,000
Internal & Professional Services	(Included)	(Included)	(Included)
TOTAL (2022 \$)	\$ 878,000,000	\$ 205,000,000	\$ 167,000,000

Table 1: HVDC Upgrade Project Cost Estimate Summary

Due to Minnesota Power’s previously-identified need to modernize the Square Butte HVDC System and the additional future capacity considerations noted above, Minnesota Power is proposing to share in some of the costs associated with the modernization part of the HVDC Upgrade Project. Therefore, as shown in Table 1, the two TSRs (Projects A727 and A746) will each be assigned a portion of the total HVDC Upgrade Project costs and Minnesota Power will also bear a portion of the cost as the HVDC Owner. Cost estimates and cost assignment are discussed further in subsequent sections of this report. The costs assigned to Project A727 will be shared equally between the two 100 MW TSRs that are included in Project A727.

Section 2: Converter Station Replacement

2.1 Background

The Square Butte HVDC System has been delivering energy from the Center Converter Station in Center, North Dakota to the Arrowhead Converter Station in Duluth, Minnesota for over 45 years. These converter stations are connected by a 465 mile HVDC transmission line operating at ± 250 kV. This HVDC line is capable of transferring up to 550 MW (1100 Amps) during bipole operation and up to 275 MW (1100 Amps) during single-pole operation utilizing metallic return or – in case of emergency – ground return.

Much of the existing equipment associated with the Square Butte HVDC converter stations is past its design life and Minnesota Power is beginning to see an impact on the reliability of the facility. Because of this impact, Minnesota Power had previously identified a need to modernize the Square Butte HVDC converter stations. This project has been reported for several years under MISO MTEP Project #4295.

To modernize the terminals of the existing Square Butte HVDC Line and implement the latest voltage source converter (“VSC”) HVDC technology, new buildings and electrical infrastructure need to be constructed on a new site near the existing HVDC terminals. Due to the specialized nature of the technology, the new HVDC converter stations will be delivered as turnkey projects by the original equipment manufacturer (“OEM”). To execute this type of project, Minnesota Power will need to work with the HVDC OEM and an HVDC Owner’s Engineer complete pre-specification studies and develop a detailed technical specification sufficient for the HVDC OEM to provide a firm-price proposal for an engineer-procure-construct (“EPC”) contract.

2.2 Scope of Work

As noted above, Minnesota Power has a baseline need to replace the original HVDC converter stations with new converter stations implementing the latest and greatest in modern HVDC technology (“HVDC Modernization Project”). In order to achieve the capacity necessary to facilitate the TSRs being evaluated in MISO Project F118, the planned HVDC Modernization Project will need to be designed to facilitate at least 900 MW (1800 Amps) of capacity in the new converter stations, which is an increase of 350 MW over the present 550 MW rating of the facility. Minnesota Power, as the HVDC Owner, has additional interest in optimizing the long-term capacity potential of the HVDC line beyond what the TSR customers currently require and is electing to design the HVDC Modernization Project to provide 1500 MW (3000 Amps) of capacity in the new converter stations. This represents the highest VSC converter station capacity currently available in the market. While the initial operation of the new converter stations will be limited to 900 MW consistent with the needs of the existing capacity plus the new TSRs, the potential to operate up to 1500 MW after a future rebuild of the HVDC transmission line will also be available.

Minnesota Power has developed a flexible and expandable solution to meet near-term needs on the HVDC line will preserving the long-term capacity expansion opportunities noted above. As a result, the existing 550 MW ± 250 kV bipole HVDC line will be converted to a symmetric monopole (SMP) configuration with one converter on each end rated for 525 kV and 1500 MW (3000 Amps) but initially operated at ± 250 kV and 900 MW (1800 Amps). In coordination with the HVDC OEM, the converter stations will be designed for future expansion to operate as part of a 3000 MW ± 250 kV bipole HVDC line. The post-project SMP configuration of the HVDC line is shown in Figure 1 below.

The scope of supply for the HVDC OEM will include both of the relocated converter stations, including valves, converter transformers, smoothing reactors, DC equipment, AC circuit breakers, control & protection, and all associated facilities. The new HVDC converter stations will be designed to interconnect at 345 kV on the AC system side, as further discussed in Section 4: AC Interconnection Facilities.

Facilities Study Report: Square Butte HVDC Upgrade

April 2023

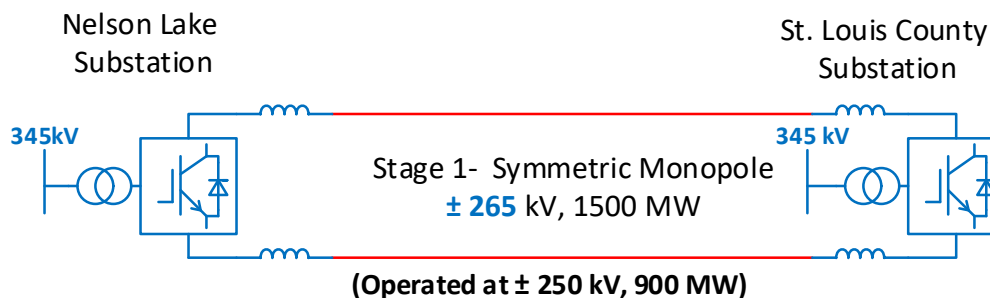


Figure 1: Post-Project HVDC Line Configuration

2.3 Cost Assignment

The anticipated costs of modernizing and upgrading the HVDC converter stations are shown in Table 2. Costs are presented in 2022 dollars. The initial converter station replacement base cost was developed from a budgetary estimate provided by the HVDC OEM. To maintain confidentiality of the OEM's direct budgetary estimate, Minnesota Power has added internal & professional services, AFUDC and contingency to the converter station base cost shown in Table 2. As discussed above, the HVDC converter station replacement will be a turnkey project and very little detailed design work was done prior to receiving the budgetary estimate from the HVDC OEM. If design assumptions change significantly during the development of the project, the base cost shown in Table 2 may change.

HVDC 900 MW Upgrade <i>Project #A727 = 200 MW</i> <i>Project #A746 = 150 MW</i>	Estimated Total Converter Station Upgrade Cost	Amount Assigned to Project #A727	Amount Assigned to Project #A746
Converter Station Base Cost	\$ 705,000,000	\$ 165,000,000	\$ 123,000,000
Internal & Professional Services	(Included)	(Included)	(Included)
Contingency - Converter Station	(Included)	(Included)	(Included)
AFUDC - Converter Station	(Included)	(Included)	(Included)
TOTAL - Converter Stations	\$ 705,000,000	\$ 165,000,000	\$ 123,000,000

Table 2: HVDC Upgrade Project – Converter Station Replacement Cost Breakdown

Due to Minnesota Power's previously-identified need to modernize the existing HVDC converter stations and the additional future capacity considerations included with the project, Minnesota Power is proposing to share in some of the converter station replacement costs. Therefore, as shown in Table 2, the two TSRs will each be responsible for a portion of the converter station replacement costs and Minnesota Power will also bear a portion of the cost.

Section 3: Transmission Line Modifications

3.1 Background

The Square Butte HVDC converter stations are connected by a 465 mile HVDC transmission line operating at ± 250 kV. The HVDC transmission line is presently designed with capacity to carry up to 550 MW (1100 Amps) during bipole operation and up to 275 MW (1100 Amps) during single-pole operation utilizing either metallic return or – in case of emergency – ground return. There are three different conductors used over the 465-mile length of the HVDC transmission line. While the majority of the line consists of 2839 ACSR, smaller conductors are present in two areas. At the Missouri River crossing in North Dakota, there is a segment of 2607 ACSR. In a separate location also in North Dakota there is a short segment of 2312 ACSR, which is the most limiting transmission line conductor for facility ratings. All three of these conductors have been designed to have sufficient conductor-to-ground clearance at an operating temperature consistent with the present 550 MW transfer level according to Minnesota Power's facility ratings methodology.

3.2 Scope of Work

The existing HVDC transmission line is presently designed to operate continuously at 550 MW (1100 Amps). To achieve a higher continuous rating of 900 MW (1800 Amps), Table 3 shows the required operating temperature for each of the three transmission line conductors discussed above. The design limit for all three transmission line conductors is 75°C, meaning it is not acceptable for any of these conductors to operate continuously above this temperature.

HVDC Capacity		Required Operating Temperature (°C)		
MW	Amps	2312 ACSR (~7 Spans of Conductor)	2607 ACSR (MO River Crossing)	2839 ACSR (Majority of HVDC Line)
550	1100	Acceptable	Acceptable	Acceptable
900	1800	83 (Must Be Replaced)	73	74

Table 3: HVDC Transmission Line Conductor Ratings

At 900 MW, both the 2607 ACSR and the 2839 ACSR conductors would be within their design limit. The upgrades necessary to achieve the capacity increase on those segments of the HVDC transmission line are likely to consist primarily of replacing existing structures with taller structures to increase conductor-to-ground clearance at the higher operating temperature. The short segment of 2312 ACSR would be well beyond its 75°C design limit when operating at 900 MW. Therefore, the 7 spans of this conductor would need to be rebuilt with a larger conductor. This required modification to achieve 900 MW capacity on the HVDC transmission line is included in the cost estimate below.

Facilities Study Report: Square Butte HVDC Upgrade

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3.3 Cost Assignment

The anticipated costs of upgrading the capacity of the existing HVDC line from 550 MW to 900 MW are shown in Table 4. Costs are presented in 2022 dollars, which were escalated from the original 2019 estimate to account for inflation. The 900 MW upgrade cost estimate is based on preliminary transmission structural engineering evaluations. If additional HVDC transmission line modifications or scope changes are found to be necessary during the development of the project, the costs presented in Table 4 may be impacted. To account for this possibility, contingency was included in the original estimates provided by transmission structural engineering.

HVDC 900 MW Upgrade <i>Project #A727 = 200 MW</i> <i>Project #A746 = 150 MW</i>	Estimated Total Transmission Line Upgrade Cost	Amount Assigned to Project #A727	Amount Assigned to Project #A746
HVDC T-Line 900 MW Upgrade	\$ 58,000,000	\$ 25,000,000	\$ 33,000,000
HVDC T-Line AFUDC	(Included)	(Included)	(Included)
HVDC T-Line Contingency	(Included)	(Included)	(Included)
TOTAL - Transmission Line	\$ 58,000,000	\$ 25,000,000	\$ 33,000,000

Table 4: HVDC Upgrade Project – Transmission Line Modifications Cost Breakdown

The cost of increasing the capacity of the transmission line from 550 MW to 900 MW will be assigned to the TSRs in its entirety. The TSR associated with Project A727 will be assigned the entire cost of increasing the capacity from 550 MW to 750 MW, consistent with the TSR amount requested for that project. The TSR associated with Project A746 will be assigned the entire cost of increasing the capacity from 750 MW to 900 MW, including the cost of the reconducted segment of 2312 ACSR discussed in Section 3.2.

Section 4: AC Interconnection Facilities

4.1 Background

The new VSC HVDC converter stations cannot be retrofitted into the existing converter station buildings, requiring that they be constructed on a new site nearby. Additional AC interconnection facilities must be constructed to re-connect the new converter stations to the existing transmission system near the existing points of interconnection. As noted in Section 2, the new HVDC converter stations will be designed to interconnect at 345 kV on the AC system side as part of preserving long-term capacity expansion opportunities to maximize use of the HVDC line.

To accommodate interconnection of the new HVDC converter stations, new AC interconnection facilities will be constructed including new 345/230 kV substations, 345 kV transmission lines, and 230 kV transmission lines. The AC interconnection facilities will be permitted and constructed by Minnesota Power as part of the HVDC Modernization Project.

4.2 Scope of Work

In Minnesota, to connect the new HVDC terminal to the existing AC system, the Project will require the construction of a new St. Louis County 345/230 kV Substation located less than one mile west of the Arrowhead Substation. The new HVDC converter station will be connected to the new St. Louis County Substation by a new 345 kV transmission line and the St. Louis County Substation will be connected to the existing Arrowhead Substation by two parallel 230 kV lines. At Arrowhead Substation, the two new 230 kV lines will be interconnected to the existing HVDC Pole 1 and Pole 2 bus positions, which will be rebuilt with higher-capacity bus and electrical equipment to accommodate the increased HVDC capacity. Additionally, a short portion of the existing ± 250 kV HVDC Line in Minnesota will be reconfigured to terminate at the new HVDC converter station.

In North Dakota, a new Nelson Lake 230 kV Switching Station will be established to tie together the existing Minnesota Power Square Butte East – Bison 230 kV Line with the existing Great River Energy Square Butte – Stanton 230 kV Line. A second 230 kV circuit will be added between Nelson Lake and Square Butte East using existing double-circuit capable structures. The Project will then require an expansion of the Nelson Lake 230 kV Switching Station to add a 345/230 kV transformer and 345 kV line entrance. A new 345 kV line will be constructed from Nelson Lake to the new HVDC converter station, where a new 345 kV bus will be required to interconnect the new line. Additionally, a portion of the existing ± 250 kV HVDC Line will need to be reconfigured to terminate at the new HVDC converter station.

Figure 2 shows the pre-project configuration of the existing Square Butte HVDC system and its interconnections to Square Butte East 230 kV and Arrowhead 230 kV. Figure 3 shows the post-project configuration after establishment of the Nelson Lake and St Louis County 345/230 kV Substations and interconnection of the new VSC HVDC converter stations.

Facilities Study Report: Square Butte HVDC Upgrade

April 2023

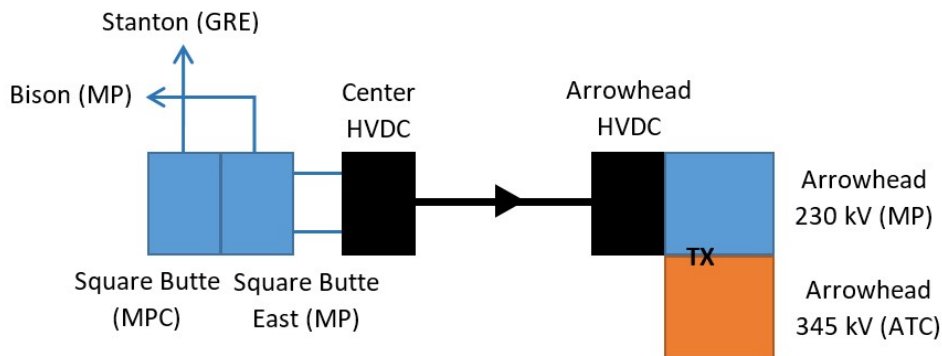


Figure 2: Pre-Project Configuration of HVDC Interconnections

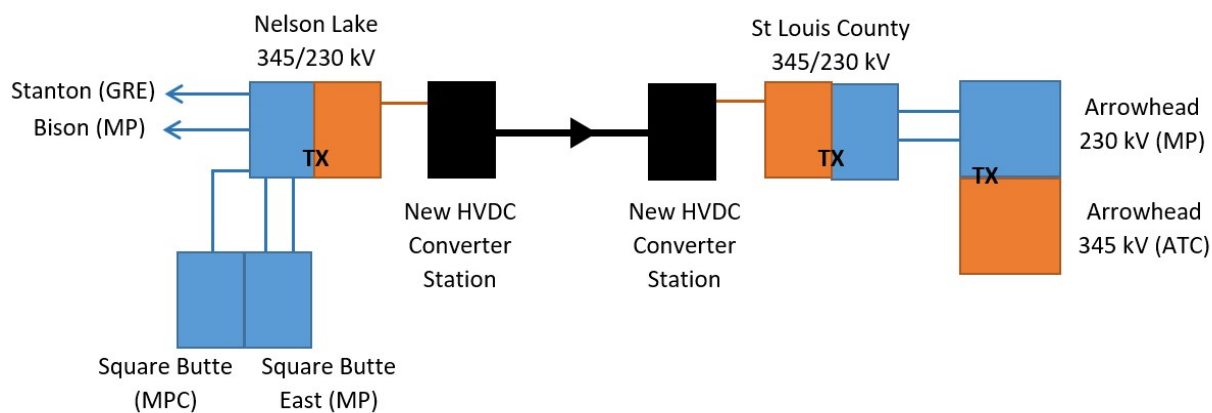


Figure 3: Post-Project Configuration of HVDC Interconnections

Facilities Study Report: Square Butte HVDC Upgrade

April 2023

4.3 Cost Assignment

The anticipated costs of AC Interconnection Facilities necessary to connect the relocated VSC HVDC converter stations to the existing AC transmission system are shown in Table 5. Costs for AC interconnection facilities were developed based on the MISO MTEP22 Cost Estimation Guide and are presented in 2022 dollars. The MTEP22 cost estimation guide assumptions included adders for both AFUDC and contingency. If design assumptions change significantly during the development of the project, the base costs shown in Table 5 may change.

HVDC 900 MW Upgrade <i>Project #A727 = 200 MW</i> <i>Project #A746 = 150 MW</i>	Estimated Total AC Interconnection Upgrade Cost	Amount Assigned to Project #A727	Amount Assigned to Project #A746
Minnesota AC Interconnections	\$ 55,000,000	\$ 7,000,000	\$ 5,000,000
North Dakota AC Interconnection	\$ 40,000,000	\$ 4,000,000	\$ 3,000,000
Nelson Lake 230 kV Substation	\$ 20,000,000	\$ 4,000,000	\$ 3,000,000
TOTAL - AC Interconnections	\$ 115,000,000	\$ 15,000,000	\$ 11,000,000

Table 5: HVDC Upgrade Project – AC Interconnection Facilities Cost Breakdown

Due to Minnesota Power's previously-identified need to modernize the existing HVDC converter stations and the additional future capacity considerations included with the project, Minnesota Power is proposing to share in some of the AC Interconnection Facility costs. Therefore, as shown in in Table 5, the two TSRs will each be responsible for a portion of the AC Interconnection Facility costs and Minnesota Power will also bear a portion of the cost.

Facilities Study Report: Square Butte HVDC Upgrade

April 2023

Section 5: Required Permits

Due to the relocation of the converter stations and the length of new AC interconnection facilities require to re-connect to the existing system, the HVDC Modernization Project will require state-level permits in both Minnesota and North Dakota. In Minnesota, a Certificate of Need and Route Permit will be required from the State of Minnesota. In North Dakota, a Certificate of Corridor Compatibility and a Route Permit will be required. Minnesota Power will obtain the necessary permits in both states.

Section 6: Project Schedule

The anticipated schedule for the Square Butte HVDC Upgrade is shown in Table 6. If there are delays in obtaining state-level permits, major changes in the expected scope of the HVDC Upgrade, or unanticipated delays due to supply chain or labor availability, then the schedule may change.

Milestone	Tentative Date	Months from Start
Facilities Construction Agreement Executed	May-2023	0
Minnesota Certificate of Need Application Filed	May-2023	0
North Dakota Certificate of Need Application Filed	Oct-2023	5
Begin Front End Engineering & Design with HVDC OEM	Jan-2024	8
Major Permits Received in Minnesota & North Dakota	Jul-2024	14
Order Long Leadtime Equipment for AC Substations	Nov-2024	18
Clearing Begins	Jan-2025	20
Construction of AC Interconnection Facilities Begins	May-2025	24
Construction of HVDC Transmission Line Upgrades Begins	Aug-2025	27
Receive Firm Proposal from HVDC OEM	Aug-2026	39
Execute Firm EPC Contract with HVDC OEM	Oct-2026	41
Construction of HVDC Converter Stations Begins	Oct-2027	53
Commercial Operation Date	Apr-2030	83

Table 6: Square Butte HVDC Upgrade – Anticipated Project Schedule

Bipole HVDC outages will be required throughout the construction period to facilitate the Transmission Line Modifications. To the extent reasonable, this transmission line construction will be coordinated with HVDC converter station outages during construction to minimize downtime as much as possible. Therefore, the transmission line modifications are expected to be executed in stages over the course of the HVDC Upgrade construction period.



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March 5, 2024

VIA ELECTRONIC FILING

The Honorable Debbie-Anne Reese
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: Midcontinent Independent System Operator, Inc.
FERC Docket No. ER24-____-000

Dear Secretary Reese:

The Midcontinent Independent System Operator, Inc. ("MISO") hereby submits¹ these Facilities Construction Agreements ("FCAs") among the merchant function of Minnesota Power, a division of ALLETE, INC., a corporation organized and existing under the laws of the State of Minnesota ("Customer"), the transmission function of Minnesota Power, a division of ALLETE, INC., a corporation organized under the laws of the State of Minnesota ("Transmission Owner") ("Transmission Owner"), and MISO, a non-profit, non-stock corporation organized and existing under the laws of the State of Delaware, (collectively, the "Parties"). MISO has designated the FCAs as Original Service Agreement Nos. 4208 and 4209 under MISO's Tariff.² The Parties request waiver of the Commission's 60-day prior notice requirement and request an effective date of February 28, 2024, as discussed below.

I. OVERVIEW OF FILING

The FCAs provides for the construction of upgrades on an affected system to support a Transmission Service Request ("TSR") pursuant to Attachment N of the Tariff.³ MISO does not have a *pro forma* facilities construction agreement for upgrades built to accommodate a TSR. Accordingly, the FCA is based-upon, but differs from, the *pro forma* generator interconnection facilities construction agreement accepted by the Commission for the construction of upgrades on affected systems to support generator interconnections pursuant to the Generator Interconnection

¹ See Section 205 of the Federal Power Act ("FPA"), 16 U.S.C. § 824d, and Section 35.12 of the Federal Energy Regulatory Commission's ("FERC" or "Commission") regulations, 18 C.F.R. § 35.12 (2022).

² MISO's FERC Electric Tariff, Fifth Revised Vol. No. 1 ("Tariff").

³ See Attachment N, Recovery of Costs with New Facilities.

The Honorable Debbie-Anne Reese

March 5, 2024

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Procedures (“GIP”) in Attachment X of the Tariff.⁴ A redline comparison of the FCA and the *pro forma* FCA are attached hereto. MISO used the Attachment X *pro forma* FCA as a base document because it has been accepted for use with generator interconnection upgrades under Attachment X of the Tariff. However, because the upgrades for F109 will be built for a TSR, pursuant to Attachment N, the differences shown in the redline should not be reviewed as deviations from the Attachment X *pro forma* FCA but are provided solely for the Commission’s convenience.⁵ These differences are discussed in Part II, below.

A. Relationship between Minnesota Power and ALLETE

ALLETE is an energy services company headquartered in Duluth, Minnesota. Through its operating division, Minnesota Power, ALLETE generates, transmits and distributes electricity in a 26,000-square-mile region of northern Minnesota, servicing 150,000 retail customers and providing wholesale electric service to 14 municipalities. Minnesota Power has approximately 2,500 MW of electric generation capacity through its ownership of generation facilities and third-party Power Purchase Agreements (“PPAs”). Minnesota Power owns 11 hydroelectric generating stations totaling approximately 114 MW throughout northern and central Minnesota. Minnesota Power currently owns and operates approximately 506 MW of wind generation located in northern Minnesota and North Dakota. The Commission originally granted ALLETE market-based rate authority on July 15, 1996, in Docket No. ER96-1823-000.⁶

Minnesota Power owns electric transmission and distribution lines of 500-kilovolt (“kV”) (232 miles), 345-kV (241 miles), 250-kV (466 miles), 230-kV (715 miles), 161-kV (43 miles), 138-kV (130 miles), 115-kV (1,248 miles), and less than 115-kV (6,390 miles). Minnesota Power owns and operates 159 substations with a total capacity of 10,086 megavolt amperes. All of Minnesota Power’s alternating current (“AC”) facilities are located in Northern Minnesota. In 2001, Minnesota Power transferred functional control of its AC transmission facilities to MISO for administration pursuant to the MISO Open Access Transmission Tariff.

ALLETE is a member of MISO and has transferred functional control of its alternating-current transmission facilities to MISO for administration pursuant to MISO’s Tariff.⁷ ALLETE serves as the Local Balancing Authority (“LBA”) for the Local Balancing Authority Area

⁴ See Attachment X, Appendix 8 *pro forma* Facilities Construction Agreement.

⁵ This is not a case-specific deviation from a *pro forma* agreement and need not meet the standards used to review such filings. See *Midwest Independent Transmission System Operator, Inc.*, 112 FERC ¶ 61,067 at P 9-10 (2005) (finding that non-conforming provisions in particular interconnection agreements that deviate from the related Commission-approved *pro forma* agreement need to be justified as operationally necessary by the unique circumstances of a given situation).

⁶ *Minn. Power & Light Co.*, 76 FERC ¶ 61,033 (1996); *ALLETE, Inc.*, Letter Order, Docket No. ER10-2819-000 (Dec. 9, 2010); *ALLETE, Inc.*, Letter Order, Docket No. ER10-2819-002 (June 6, 2014) (accepting change in status); *ALLETE, Inc.*, Letter Order, Docket No. ER10-2819-003 (Mar. 31, 2017) (accepting updated market power analysis and continuing market-based rate authorization).

⁷ *Minnesota Power, Inc. and Superior Water, Light and Power Co.*, 96 FERC ¶ 61,153 (2001).

The Honorable Debbie-Anne Reese
March 5, 2024
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(“LBAA”) in which its transmission facilities are located. As the transmission-owner and LBA, ALLETE physically operates transmission facilities in its LBAA, subject to MISO’s direction. ALLETE’s LBA-related responsibilities include SCADA services.⁸

B. Square Butte HVDC System

The Square Butte HVDC System has been delivering energy from the Center Converter Station in Center, North Dakota to the Arrowhead Converter Station in Duluth, Minnesota for over 45 years. These converter stations are connected by a 465-mile HVDC transmission line operating at ± 250 kV. This HVDC line is capable of transferring up to 550 MW (1100 Amps) during bipole operation and up to 275 MW (1100 Amps) during single-pole operation utilizing metallic return or – in case of emergency – ground return.

Much of the existing equipment associated with the Square Butte HVDC converter stations is past its design life and Minnesota Power is beginning to see an impact on the reliability of the facility. Because of this impact, Minnesota Power had previously identified a need to modernize the Square Butte HVDC converter stations. This project has been reported for several years under MISO MTEP Project #4295.

The purpose of these FCAs is to identify the scope, estimated cost, and timing of upgrades necessary on the existing Square Butte HVDC System to accommodate MISO Projects F118, which is associated with Transmission Service Requests #90481026 & 95418167 (Project A727) and F119 associated with Transmission Service Request #91365462 (Project A746). To facilitate these Transmission Service Requests (TSRs), the existing Square Butte HVDC System would need to be modernized and its capacity would need to be increased by up to 350 MW to a total capability of 900 MW (the “HVDC Upgrade Project”). While FCAs are generally used for Network Upgrades associated with Generator Interconnection, the Commission has previously approved a construction agreement associated with Network Upgrades on the transmission system.⁹

⁸ See Framework For Operational Responsibilities, Appendix E, Agreement of Transmission Facilities Owners to Organize the Midcontinent Independent System Operator, Inc., A Delaware Non-Stock Corporation, (“MISO Transmission Owners’ Agreement”) Pursuant to the terms of the MISO Transmission Owners’ Agreement, LBAs are required to operate their LBAs for local generation control, and the LBAs are also responsible for the balancing authority area functions assigned to them by the Agreement Between Midwest ISO and Midwest ISO Balancing Authorities Relating to Implementation of TEMT (Open Access Transmission and Energy Markets Tariff), as amended on March 14, 2008. As the operator of the ALLETE LBAA, ALLETE actually operates the transmission facilities physically located within its LBAA, including third-parties’ facilities that interconnect with ALLETE’s transmission system. ALLETE notes that its LBAA includes Minnesota Power’s transmission facilities in Minnesota and Superior Water Light & Power’s (“Superior”) transmission facilities in Wisconsin. Superior is a wholly-owned subsidiary of ALLETE.

⁹ *Midcontinent Indep. Sys. Operator, Inc.*, ER18-2424 (October 31, 2018) (Letter Order accepting MISO’s filing of a Construction and Payment Agreement for Network Upgrades on the transmission system) and *Midcontinent Indep. Sys. Operator, Inc.*, ER16-149-001 (December 21, 2015) (Letter order accepting an FCA for a TSR).

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II. REVISIONS TO APPLY THE RELEVANT PROVISIONS FORM THE *PRO FORMA* FACILITIES CONSTRUCTION AGREEMENT TO AN FCA FOR A TSR

Recitals

MISO updated these paragraphs to reflect the specific TSRs at issue here and to reflect that this agreement is pursuant to Tariff Attachment N, and not Attachment X.

Definitions Sections:

MISO updated the numbering of various Articles to reflect deletions.

[Former Article 1.6] (“Commercial Operation”) – MISO deleted this definition because it is not relevant to TSRs.

[Former Article 1.7] (“Commercial Operation Date”) – MISO deleted this definition because it is not relevant to TSRs.

Article 1.9 (“Direct Assignment Facilities”) MISO added this definition from the Tariff to track the use of the terms “Network Upgrades” and “Direct Assignment Facilities” in Attachment N.¹⁰ The term replaces the term “System Protection Facilities” that was used in the *pro forma* facilities construction agreement for generator interconnections under Attachment X.

[Former Article 1.14] (“Generator Interconnection Procedures (GIP)”) – MISO deleted this definition of the GIP in Attachment X because the FCA relates to upgrades under Attachment N.

[Former Article 1.16] (“In-Service Date”) – MISO deleted this definition because there is no In-Service Date addressed in this FCA.

[Former Article 1.18] (“Interconnection Agreement”) – MISO deleted this definition because there is no interconnection agreement related to the transmission service request addressed in this FCA.

Article 1.20 (“Network Upgrades”) – MISO updated this definition to include the language used in Module A of the Tariff, rather than a definition based on the Point of Interconnection of a Generating Facility that does not apply to this FCA. Use of the Module A definition will avoid confusion as to the application of these provisions. Specifically, the definition in the *pro forma* facilities construction agreement tracked the definition in MISO’s *pro forma* Generator Interconnection Agreement (“GIA”) in Attachment X of the Tariff. Attachment X addresses the interconnection of new Generating Facilities and relates the term “Network Upgrade” to the Point of Interconnection for a related Generating Facility.

¹⁰ See Attachment N, Recovery of Costs with New Facilities.

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In contrast, for this FCA a TSR, rather than a Generating Facility, triggers the need for the Network Upgrades. Accordingly, the Network Upgrades built under this agreement will be subject to cost allocation under Attachment N of the Tariff. This revision clarifies that facilities will be built at the expense of the Transmission Customer in order to accommodate requests for Firm Point-to-Point or Network Integration Transmission Service, or the new designation of a Network Resource.

Article 1.24 (“Transmission Service”) – MISO added this definition to track the language used in Module A of the Tariff so that it is consistent with the use of Transmission Service in Attachment N of the Tariff.¹¹ MISO requests that the Commission accept this definition in order to avoid confusion as to the application of these provisions by keeping the terms of this FCA consistent with their use in Attachment N.

[Former Article 1.24] (“Shared Network Upgrades”) – MISO deleted this definition because the term does not appear in the FCA.

Global Revisions to the Body of the FCA for TSRs

MISO made certain revisions throughout the entire FCA, specifically: 1) replaced “Interconnection Customer” with “Transmission Customer” to reflect the language used in Attachment N of the Tariff; 2) deleted references to generating facilities,¹² and 3) replaced “System Protection Facilities” with “Direct Assignment Facilities.” These revisions appropriately update the FCA because a TSR, rather than the interconnection of a new Generating Facility, has caused the need for the construction of Network Upgrades.¹³

Specific Revisions to the Body of FCA for TSRs

Article 2.2.1 (“General”) – MISO deleted the language regarding repayment by the Transmission Owner to refund the Transmission Customer because it is inconsistent with the reimbursement provisions in Attachment N of the Tariff. MISO also deleted the references to the commercial operation date for the facility and the in service date of the network upgrades since they are not relevant here.

Article 3.1.2.3 (“Termination in the Event of a Material Modification”) – MISO replaced the reference to Commercial Operation Date with In-Service Date because a Commercial Operation Date is not relevant to TSRs.

¹¹ See 1.T Transmission Service: (defining “Transmission Service” as “Point-To-Point Transmission Service provided under Module B of this Tariff on a firm and non-firm basis, including HVDC Service, and the Network Integration Transmission Service under Module B of this Tariff.”) (emphasis added). The FCA was negotiated prior to the addition of the concept of “HVDC Service” into this definition and HVDC Service is not relevant to this FCA. Therefore, the underlined text above referencing HVDC Service is not included in the definition in the FCA.

¹² MISO deleted references to generating facilities in the Recitals and Sections 1.2 and 1.16.

¹³ As noted in Section 3.1.2 of the FCA, there is a related new Generating Facility that is the cause of the TSR. However, the TSR, and not the interconnection of the underlying Generating Facility, drives the need for these upgrades. Accordingly, these upgrades are processed under Attachment N.

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III. DOCUMENTS SUBMITTED IN THIS FILING

The documents submitted with this filing include this transmittal letter and a public and non-public version of the FCAs in accordance with the Parties' designation of the diagrams contained in this filing as Controlled Unclassified Information ("CUI") and Critical Energy Infrastructure Information ("CEII") under the Commission's rules. 18 C.F.R. § 388.113 (2022). Pursuant to the Commission's Notice Announcing New Combined Notice of Filings, issued on May 13, 2005, and the Commission's subsequent listing on its website, no form of notice is required under 18 C.F.R. § 35.11 (2022).¹⁴ The Parties have designated Exhibit C1 of each Agreement as CUI//CEII.

MISO hereby requests confidential treatment of the CEII contained in Exhibit C1 of the non-public version of the FCAs enclosed pursuant to 18 C.F.R. § 388.113. The Parties assert that the information contained in Exhibit C1 qualifies as CEII pursuant to 18 C.F.R. § 388.113(c)(1) for the following reasons: the diagrams attached to the FCAs are system maps that provide specific detailed design information about existing critical transmission system infrastructure. The Exhibit is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. § 552. Members of the public can obtain access to the Exhibits by complying with the Commission's procedures per 18 C.F.R. § 388.113.

The CEII information submitted with this filing will continue to be CEII while the facilities reported upon continue in operation. Due to the long-lived nature of utility facilities and their operation, this period is expected to be greater than the five-year period set out in 18 C.F.R. § 388.113(e)(1). Upon any expiration of the CEII designation, the critical infrastructure information should therefore be treated as CEII and re-designated as such while the facilities remain in operation.

The non-public version of the Interconnection Agreement containing CEII information has been marked CUI//CEII according to the Commission's instructions.

The documents submitted with this filing include this transmittal letter;

Tab A: Clean copy of the Non-Public FCA for Square Butte TSR 90481026 & 95418167 ;

Tab A: Clean copy of the Public FCA for Square Butte TSR 90481026 & 95418167;

Tab B: Redlined copy of the Public FCA for Square Butte TSR 90481026 & 95418167 reflecting changes as compared to the *pro forma* FCA;

Tab C: Clean copy of the Non-Public FCA for Square Butte TSR 91365462;

¹⁴ See Documents and Filings, Notice Formats, available at <http://www.ferc.gov/docs-filing/not-form.asp>.

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Tab C: Clean copy of the Public FCA for Square Butte TSR 91365462;

Tab D: Redlined copy of the Public FCA for Square Butte TSR 91365462 reflecting changes as compared to the *pro forma* FCA; and

Tab E: Protective Agreement.

IV. PROPOSED EFFECTIVE DATE

MISO respectfully requests that the Commission make these FCAs effective as of February 28, 2024. The Parties have indicated their intention for and support of an effective date of February 28, 2024. MISO requests that the February 28, 2024 date be used to provide certainty to the Parties as to the status of the agreement. To the extent that the Commission determines that any requirements of 18 C.F.R. § 35 apply that have not been specifically addressed herein, the MISO respectfully requests waiver of such requirements.

V. COMMUNICATIONS

All correspondence and communications in this matter should be addressed to:

Madison Pitts*
Midcontinent Independent
System Operator, Inc.
1700 Centerview Drive
Little Rock, AR 72211
Telephone (317) 316-7911
mpitts@misoenergy.org
agreements@misoenergy.org

*Persons authorized to receive service.

VI. NOTICE AND SERVICE

MISO notes that it has served a copy of this filing electronically, including attachments, upon all Tariff Customers under the Tariff, MISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, as well as all state commissions within the Region. The filing has been posted electronically on MISO's website at <https://www.misoenergy.org/legal/ferc-filings/> for other interested parties in this matter. In addition, MISO has served a copy of this filing electronically on all parties to these agreements.

VII. CONCLUSION

For the foregoing reasons, MISO requests that the Commission accept these FCAs for filing and grant the proposed effective date of February 28, 2024, and grant waiver of any

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Commission regulations not addressed herein that the Commission may deem applicable to this filing.

Respectfully submitted,

/s/ Madison Pitts

Madison Pitts

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System Operator, Inc.

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mpitts@misoenergy.org

*Attorney for the Midcontinent Independent
System Operator, Inc.*

Attachments

TAB A

PUBLIC

SA 4208 MINNESOTA POWER-MINNESOTA POWER FCA VERSION 31.0.0

EFFECTIVE 2/28/2024

ORIGINAL SERVICE AGREEMENT NO. 4208

PUBLIC VERSION

FACILITIES CONSTRUCTION AGREEMENT

entered into by the

Midcontinent Independent System Operator, Inc.,

And

Minnesota Power, a division of ALLETE, INC.

And

Minnesota Power, a division of ALLETE, INC.

For

Square Butte TSR 90481026 & 95418167

FACILITIES CONSTRUCTION AGREEMENT

entered into by the

Midcontinent Independent System Operator, Inc.,

And

Minnesota Power, a division of ALLETE, INC.

And

Minnesota Power, a division of ALLETE, INC.

entered into on the 28th day of February, 2024

FACILITIES CONSTRUCTION AGREEMENT

THIS FACILITIES CONSTRUCTION AGREEMENT (sometimes hereinafter referred to as “Agreement”) is made and entered into this 28th day of February, 2024, by and among the merchant function of **Minnesota Power**, a division of **ALLETE, INC.**, a corporation , organized and existing under the laws , of the State of Minnesota (“Customer”), the **Midcontinent Independent System Operator, Inc.**, a non-profit, non-stock corporation organized and existing under the laws of the State of Delaware (“Transmission Provider”) and the transmission function of **Minnesota Power**, a division of **ALLETE, INC.**, a corporation organized under the laws of the State of Minnesota (“Transmission Owner”). Customer, Transmission Owner, or Transmission Provider each may be referred to as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, Transmission Owner owns electric facilities and is engaged in generation, transmission, distribution and/or sale of electric power and energy; and

WHEREAS, Transmission Provider has functional control of the operations of the Transmission System, as defined herein, and is responsible for providing transmission and interconnection service on the transmission facilities under its control; and

WHEREAS, Customer intends to reserve Firm Point to Point Transmission Service via Transmission Provider’s Reservation Request Nos. **90481026 and 95418167**; and

WHEREAS, the Transmission System is affected by the firm transmission service request of the Facility and additions, modifications and upgrades must be made to certain existing facilities of the Transmission System to accommodate such transmission service and

WHEREAS, Customer has requested, and Transmission Provider and Transmission Owner have agreed, to enter into this Agreement with Customer for the purpose of facilitating the transmission service of the Facility by the construction of necessary Network Upgrades to the Transmission System;

NOW, THEREFORE, in consideration of and subject to the mutual covenants contained herein, it is agreed:

ARTICLE 1 DEFINITIONS

Wherever used in this Agreement with initial capitalization, the following terms shall have the meanings specified or referred to in this Article 1. Terms used in this Agreement with initial capitalization not defined in this Article 1 shall have the meanings specified in the Tariff:

- 1.1 “Applicable Laws and Regulations” shall mean all duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority having jurisdiction over the Parties, their respective facilities and/or the respective services they provide.
- 1.2 “Applicable Reliability Council” shall mean the reliability council of NERC applicable to the Local Balancing Authority of the Transmission System to which the Facility is directly interconnected.
- 1.3 “Applicable Reliability Standards” shall mean Reliability Standards approved by the Federal Energy Regulatory Commission (FERC) under Section 215 of the Federal Power Act, as applicable.
- 1.4 “Breach” shall mean the failure of a Party to perform or observe any material term or condition of this Agreement and shall include, but not be limited to, the events described in Article 9.1.
- 1.5 “Breaching Party” shall mean a Party that is in Breach of this Agreement.
- 1.6 “Confidential Information” shall mean any proprietary or commercially or competitively sensitive information, trade secret or information regarding a plan, specification, pattern, procedure, design, device, list, concept, policy or compilation relating to the present or planned business of a Party, or any other information as specified in Article 12, which is designated as confidential by the Party supplying the information, whether conveyed orally, electronically, in writing, through inspection, or otherwise, that is received by another Party.
- 1.7 “Customer” shall mean, for purposes of this Agreement, a Transmission Customer as defined in the Tariff.
- 1.8 “Default” shall mean the failure of a Breaching Party to cure its Breach in accordance with Article 9 of this Agreement.
- 1.9 “Direct Assignment Facilities” shall mean those facilities or portions of facilities that are constructed by any Transmission Owner(s), ITC, or ITC Participant(s) for the sole use/benefit of a particular Transmission Customer requesting service under this Tariff. Direct Assignment Facilities shall be specified in the Service Agreement that governs service to the Transmission Customer and shall be subject to Commission approval.

- 1.10** “Effective Date” shall mean the date on which this Agreement becomes effective upon execution by the Parties subject to acceptance by the Commission, or if filed unexecuted, upon the date specified by the Commission.
- 1.11** “FERC” shall mean the Federal Energy Regulatory Commission, also known as Commission, or its successor.
- 1.12** “Force Majeure” shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party’s control. A Force Majeure event does not include an act of negligence or intentional wrongdoing by the Party claiming Force Majeure.
- 1.13** “Good Utility Practice” shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known to the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.
- 1.14** “Governmental Authority” shall mean any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided, however, that such term does not include Customer, Transmission Provider, Transmission Owner, or any Affiliate thereof.
- 1.15** “In-Service Date” shall mean the date upon which Customer reasonably expects it will be ready to begin use of the Network Upgrades and/or Direct Assignment Facilities.
- 1.16** “Local Balancing Authority” shall mean an operational entity or a Joint Registration Organization which is (i) responsible for compliance with the subset of NERC Balancing Authority Reliability Standards defined in the Balancing Authority Agreement for their local area within the MISO Balancing Authority Area, (ii) a Party to Balancing Authority Agreement, excluding MISO, and (iii) shown in Appendix A to the Balancing Authority Agreement.
- 1.17** “Loss” shall mean any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party’s performance, or non-

performance of its obligations under this Agreement on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing, by the indemnified Party.

- 1.18** “Material Modification” shall mean: (1) modification to a Transmission Service Request in the queue that has a material adverse impact on the cost or timing or constraint identification of Transmission Service Request; or (2) planned modification to proposed network upgrades that is undergoing evaluation and has a material adverse impact on the Transmission System prior to the modification.
- 1.19** “NERC” shall mean the North American Electric Reliability Corporation, or its successor organization.
- 1.20** “Network Upgrades” shall mean the additions, modifications, and upgrades to the Transmission System required to accommodate the transmission service requests.
- 1.2** “Non-Breaching Party” shall mean a Party that is not in Breach of this Agreement with regard to a specific event of Breach by another Party.
- 1.22** “Reasonable Efforts” shall mean, with respect to an action required to be attempted or taken by a Party under this Agreement, efforts that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.
- 1.23** “Tariff” shall mean the Transmission Provider’s Tariff through which open access transmission service and Interconnection Service are offered, as filed with the Commission, and as amended or supplemented from time to time, or any successor tariff.
- 1.24** “Transmission Service” shall mean Point-to-Point Transmission Service provided under Module B of the Tariff on a firm and non-firm basis and the Network Integration Transmission Service under Module B of the Tariff.
- 1.25** “Transmission System” shall mean the facilities owned by Transmission Owner and controlled or operated by Transmission Provider or Transmission Owner that are used to provide Transmission Service or Wholesale Distribution Service under the Tariff.

ARTICLE 2 TERM OF AGREEMENT

- 2.1 Effective Date.** Subject to required regulatory authorizations, including, without limitation, acceptance by FERC under Section 205 of the Federal Power Act, this Agreement shall become effective on the date on which this Agreement is made and entered into by the Parties.
- 2.2 Term.**

- 2.2.1 General.** This Agreement shall become effective as provided in Article 2.1 and shall continue in full force and effect until the earlier of (i) the final repayment, where applicable, by Transmission Owner of the amount funded by Customer for Transmission Owner's design, procurement, construction and installation of the Network Upgrades and Direct Assignment Facilities provided in Appendix A; (ii) the Parties agree to mutually terminate this Agreement; (iii) earlier termination is permitted or provided for under Appendix A of this Agreement; or (iv) Customer terminates this Agreement after providing Transmission Provider and Transmission Owner with written notice at least sixty (60) Calendar Days prior to the proposed termination date, provided that Customer has no outstanding contractual obligations to Transmission Provider or Transmission Owner under this Agreement. No termination of this Agreement shall be effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination. The term of this Agreement may be adjusted upon mutual agreement of the Parties, if the In-Service Date for the Network Upgrades and Direct Assignment Facilities is adjusted in accordance with the rules and procedures established by Transmission Provider.
- 2.2.2 Termination Upon Default.** In the event of a Default by a Party, the Non-Breaching Party or Parties shall have the termination rights described in Articles 9 and 10; provided, however, if an event described in part (c) of Article 9.1 has not occurred, and provided the Default does not pose a threat to the reliability of the Transmission System, neither Transmission Provider nor Transmission Owner may terminate this Agreement if Customer is the Breaching Party and Customer (i) has undertaken, in accordance with Article 9.2, to cure the Breach that led to the Default and has failed to cure the Breach for reasons other than Customer's failure to diligently commence reasonable and appropriate steps to cure the Breach within the thirty (30) Calendar Days allowed by Article 9.2, and (ii) compensates Transmission Provider or Transmission Owner within thirty (30) Calendar Days for the amount of damage billed to Customer by Transmission Provider or Transmission Owner for any damages, including costs and expenses, incurred by Transmission Provider or Transmission Owner as a result of such Default. In the event of an occurrence described in part (c) of Article 9.1, and providing the Default does not pose a threat to the reliability of the Transmission System, the Non-Breaching Party or Parties shall not terminate this Agreement provided that the Breaching Party provided an assurance of payment acceptable to the Non-Breaching Party, and pays any applicable damages.
- 2.2.3 Consequences of Termination.** In the event of a termination by any Party, other than a termination by Customer due to a Breach by Transmission Owner, Customer must pay Transmission Owner all amounts still due and payable for construction and installation of the Network Upgrades and Direct Assignment Facilities (including, without limitation, any equipment ordered related to such construction), plus all out-of-pocket expenses incurred by Transmission Owner in connection with the construction and installation of the Network Upgrades and Direct Assignment Facilities, through the date of termination, plus any actual

costs which Transmission Owner (A) reasonably incurs in winding up work and construction demobilization and (B) reasonably incurs to ensure the safety of persons and property and the integrity and safe and reliable operation of the Transmission System. Transmission Owner agrees to use Reasonable Efforts to minimize such costs.

2.2.4 Material Adverse Change. In the event of a material change in law or regulation that adversely affects, or may reasonably be expected to adversely affect a Party's rights and/or obligations under this Agreement, the Parties shall negotiate in good faith any amendments to this Agreement necessary to adapt the terms of this Agreement to such change in law or regulation, and Transmission Provider shall file such amendments with FERC. If, within sixty (60) Calendar Days after the occurrence of any event described in this Article 2.2.4, the Parties are unable to reach agreement as to any necessary amendments, the Parties may proceed under Article 14 to resolve any disputes related thereto; Transmission Provider and/or Transmission Owner shall have the right to make a unilateral filing with FERC to modify this Agreement pursuant to Section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder, and Customer shall have the right to make a unilateral filing with FERC to modify this Agreement pursuant to Section 206 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder; provided that a Party shall have the right to protest any such filing by another Party and to participate fully in any proceeding before FERC in which such modifications may be considered. If a Party is unable to fully perform this Agreement due to the occurrence of an event described in this Article 2.2.4 and such inability is not based on economic reasons, such Party shall not be deemed to be in Default of its obligations under this Agreement, provided that such Party is seeking dispute resolution under Article 14 or before FERC, to the extent that (i) such Party is unable to perform as a result of such an event and (ii) such Party acts in accordance with its obligations under this Article 2.2.4.

2.3 Regulatory Filing. In accordance with Applicable Laws and Regulations, Transmission Provider shall file this Agreement, and any amendment to this Agreement with FERC as a service agreement under the Tariff. If Customer has executed this Agreement or any amendment to this Agreement, Customer shall not protest this Agreement or the amendment, shall reasonably cooperate with Transmission Provider with respect to such filing and shall provide any information, including the rendering of testimony or pleadings, as applicable, reasonably requested by Transmission Provider to the extent reasonably needed to comply with applicable regulatory requirements.

2.4 Survival. The applicable provisions of this Agreement shall continue in effect after expiration, cancellation, or termination hereof to the extent necessary to provide for final billings, billing adjustments, and the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect.

- 2.5 Termination Obligations.** Upon any termination pursuant to this Agreement, Customer shall be responsible for the payment of all costs or other contractual obligations incurred prior to the termination date including previously incurred capital costs, penalties for early termination, costs of removal and site restoration.

ARTICLE 3

CONSTRUCTION OF NETWORK UPGRADES AND DIRECT ASSIGNMENT FACILITIES

3.1 Construction.

- 3.1.1 Transmission Owner Obligations.** Transmission Owner shall (or shall cause such action to) design, procure, construct and install, and Customer shall pay, consistent with Article 3.2, the cost of, all Network Upgrades and Direct Assignment Facilities identified in Appendix A. All Network Upgrades and Direct Assignment Facilities designed, procured, constructed and installed by Transmission Owner pursuant to this Agreement shall satisfy all requirements of applicable safety and/or engineering codes, including those requirements of Transmission Owner and Transmission Provider, and comply with Good Utility Practice, and further, shall satisfy all Applicable Laws and Regulations.

3.1.2 Suspension of Work.

- 3.1.2.1 Right to Suspend for Force Majeure Event.** Provided that such suspension is permissible under the authorizations, permits or approvals granted for the construction of the Network Upgrades and Direct Assignment Facilities Customer will not suspend unless a Force Majeure event occurs. Customer must provide written notice of its request for suspension to Transmission Provider and Transmission Owner, and provide a description of the Force Majeure event that is acceptable to Transmission Provider. Suspension will only apply to Customer milestones and Interconnection Facilities described in the Appendices of this Agreement. Prior to suspension, Customer must also provide security acceptable to Transmission Owner, equivalent to the higher of \$5 million or the total cost of all Network Upgrades, Transmission Owner's Direct Assignment Facilities, and Distribution Upgrades listed in Appendix A of this Agreement. Network Upgrades, Direct Assignment Facilities will be constructed on the schedule described in the Appendices of this Agreement unless: (1) construction is prevented by the order of a Governmental Authority; (2) the Network Upgrades and Direct Assignment Facilities are not needed by any other project; or (3) Transmission Owner or Transmission Provider determines that a Force Majeure event prevents construction. In the event of (1), (2), or (3) security shall be released upon the determination that the Network Upgrades and Direct Assignment Facilities will no longer be constructed.

If suspension occurs, Customer shall be responsible for the costs which Transmission Owner incurs (i) in accordance with this Agreement prior to the suspension, (ii) in suspending such work, including any costs incurred to perform such work as may be necessary to ensure the safety of persons and property and the integrity of the Transmission System and, if applicable, any costs incurred in connection with the cancellation of contracts and orders for material which Transmission Owner cannot reasonably avoid, and (iii) reasonably incurs in winding up work and construction demobilization; provided, however, that, prior to canceling any such contracts or orders, Transmission Owner shall obtain Customer's authorization. Customer shall be responsible for all costs incurred in connection with Customer's denial of authorization to cancel such contracts or orders. Interest as provided in

Article 3.2.2.2 on amounts paid by Customer to Transmission Owner for the design, procurement, construction and installation of the Network Upgrades and Direct Assignment Facilities, shall not accrue during periods in which Customer has suspended construction under this Article 3.1.2. Transmission Owner shall invoice Customer pursuant to Article 6 and use Reasonable Efforts to minimize its costs. In the event that Customer suspends work pursuant to this Article, no construction duration, timelines and schedules set forth in Appendix A shall be suspended during the period of suspension unless ordered by a Governmental Authority, with such order being the Force Majeure event causing the suspension.

3.1.2.2 Recommencing of Work. If Customer requests Transmission Owner to recommence such work, Transmission Owner shall have no obligation to afford such work the priority it would have had but for the prior actions of Customer to suspend the work. In such event, Customer shall be responsible for any costs incurred in recommencing the work. All recommenced work shall be completed pursuant to an amended schedule for the transmission service as agreed to by the Parties. Transmission Provider and Transmission Owner have the right to request a System Impact Study if conditions have materially changed subsequent to the request to suspend. Customer shall be responsible for the costs of any studies required.

3.1.2.3 Termination in the Event of a Material Modification. In the event Customer suspends the performance of work by Transmission Owner pursuant to this Article 3.1.2 and modifies its In-Service Date, this Agreement shall be deemed terminated unless Customer demonstrates that the change is not a Material Modification under FERC precedent.

3.1.2.4 Right to Suspend Due to Default. Transmission Owner reserves the right, upon written notice to Customer, to suspend, at any time, work by

Transmission Owner and the incurrence of additional expenses associated with the construction and installation of the Network Upgrades and Direct Assignment Facilities upon the occurrence of either a Breach that Customer is unable to cure pursuant to Article 9 or an Event of Default pursuant to Article 9. Any form of suspension by Transmission Owner shall not be barred by Articles 2.2.2, 2.2.3 or 9.2.2, nor shall it affect Transmission Owner's right to terminate the work or this Agreement pursuant to Article 10. In such events, Customer shall be responsible for costs which Transmission Owner incurs as set forth in Article 2.2.3.

3.1.3 Construction Status. Transmission Owner shall keep Customer and Transmission Provider advised periodically as to the progress of its respective design, procurement and construction efforts as described in Appendix A. Customer may, at any time, request a progress report from Transmission Owner, with a copy to be provided to Transmission Provider. If, at any time, Customer determines that the completion of the Network Upgrades and Direct Assignment Facilities will not be required until after the specified In-Service Date, Customer will provide written notice to Transmission Owner and Transmission Provider of such later date upon which the completion of the Network Upgrades and Direct Assignment Facilities would be required. Transmission Owner may delay the In-Service Date of the Network Upgrades accordingly.

3.1.4 Timely Completion. Transmission Owner shall use Reasonable Efforts to design, procure, construct, install, and test the Network Upgrades and Direct Assignment Facilities in accordance with the schedule set forth in Appendix A, which schedule may be revised from time to time by mutual agreement of the Parties. If any event occurs that will affect the time for completion of the Network Upgrades and Direct Assignment Facilities, or the ability to complete any of them, Transmission Owner and/or Transmission Provider shall promptly notify Customer, with a copy to the other Party. In such circumstances, Transmission Provider shall, within fifteen (15) Calendar Days of such notice, convene a technical meeting with Customer and Transmission Owner to evaluate the alternatives available to Customer. Transmission Owner and/or Transmission Provider shall also make available to Customer all studies and work papers related to the event and corresponding delay, including all information that is in the possession of Transmission Provider or Transmission Owner that is reasonably needed by Customer to evaluate alternatives. Transmission Owner shall, at Customer's request and expense, use Reasonable Efforts to accelerate its work under this Agreement to meet the schedule set forth in Appendix A, provided that Customer authorizes such actions and the costs associated therewith in advance.

3.2 Network Upgrade Costs and Credits.

3.2.1 Costs. Customer shall pay to Transmission Owner costs (including taxes and financing costs) associated with seeking and obtaining all necessary approvals and of designing, engineering, constructing, and testing the Network Upgrades and

Direct Assignment Facilities, as identified in Appendix A, in accordance with the cost recovery method provided herein;

Customer shall pay for Direct Assignment Facilities and Network Upgrades in accordance with Attachment N of the Tariff. The cost assignment provisions shall apply to facilities constructed by Transmission Owner until such time as Transmission Owner is able to fully recover its revenue requirements as calculated in Attachment N, Section C. If the Transmission Service Request is discontinued or suspended, the Transmission Customer shall pay the Transmission Owner for the remaining applicable amounts that must be paid pursuant to Attachment N of the Tariff.

Transmission Owner shall install, at Customer's expense, any Transmission Owner's Direct Assignment Facilities that may be required on the Transmission Owner's Interconnection Facilities or the Transmission Owner's transmission or distribution facilities as a result of the Network Upgrades required by Customer's request.

3.2.1.1 Lands of Other Property Owners. If any part of the Transmission Owner's Network Upgrades, Direct Assignment Facilities, and/or Distribution Upgrades is to be installed on property owned by persons other than Customer or Transmission Owner, Transmission Owner shall at Customer's expense use efforts, similar in nature and extent to those that it typically undertakes on its own behalf or on behalf of its Affiliates, including use of its eminent domain authority to the extent permitted and consistent with Applicable Laws and Regulations and, to the extent consistent with such Applicable Laws and Regulations, to procure from such persons any rights of use, licenses, rights of way and easements that are necessary to construct, operate, maintain, test, inspect, replace or remove the Transmission Owner's Interconnection Facilities, Network Upgrades, Direct Assignment Facilities, and/or Distribution Upgrades upon such property.

3.2.2 Credits.

3.2.2.1 Repayment. Customer shall be entitled to a cash repayment by Transmission Owner(s) that owns the Network Upgrades, of the amount paid respectively to Transmission Owner, if any, for the Network Upgrades, as provided under the Tariff, and including any tax gross-up or other tax-related payments associated with the repayable portion of the Network Upgrades, and not repaid to Customer pursuant to Article 3.3.1 or otherwise, to be paid to Customer on a dollar-for-dollar basis for the non-usage sensitive portion of transmission charges, as payments are made under the Tariff for Transmission Service with respect to the Facility. Any repayment shall include interest calculated in accordance with the

methodology set forth in FERC's regulations at 18 C.F.R. § 35.19 a(a)(2)(iii) from the date of any payment for Network Upgrades through the date on which Customer receives a repayment of such payment pursuant to this subparagraph. Interest shall not accrue during periods in which Customer has suspended construction pursuant to Article 3.1.2.1 or the Network Upgrades have been determined not to be needed pursuant to this Article 3.2.2.1. Customer may assign such repayment rights to any person.

3.2.2.2 Amount. Transmission credits will be based on the final, actual cost of completing the Network Upgrades as provided by the final invoice prepared by Transmission Owner pursuant to Article 6.4 of this Agreement. Any repayment made pursuant to Article 3.2.2.1 shall include (i) the final, actual cost after any true-up amounts have been paid pursuant to Article 6.4, and (ii) interest calculated in accordance with the methodology set forth in FERC's regulations at 18 C.F.R. §35.19a(a)(2)(iii) from the date of any payment for Network Upgrades through the date on which Customer receives a repayment of such payment pursuant to this Article 3.2 until fully reimbursed. Interest shall not accrue during periods in which Customer has suspended construction pursuant to Article 3.1.2.1.

3.2.2.3 Alternative Payment Schedule. Notwithstanding the foregoing, as applicable and consistent with the Tariff, Customer, Transmission Provider, and Transmission Owner, may adopt any alternative payment schedule that is mutually agreeable.

3.2.2.4 RESERVED

3.2.2.5 Rights not Relinquished. Notwithstanding any other provision of this Agreement, nothing herein shall be construed as relinquishing or foreclosing any rights, including but not limited to firm transmission rights, capacity rights, transmission congestion rights, or transmission credits, that Customer, shall be entitled to, now or in the future under any other agreement or tariff as a result of, or otherwise associated with, the transmission capacity, if any, created by the Network Upgrades, including the right to obtain refunds or transmission credits for Transmission Service that is not associated with the Facility.

3.3 Taxes.

3.3.1 Indemnification for Contributions in Aid of Construction. The Parties intend that all payments made by Customer to Transmission Owner for the installation of the Network Upgrades and Direct Assignment Facilities shall be non-taxable contributions to capital in accordance with the Internal Revenue Code and any

applicable state tax laws and shall not be taxable as contributions in aid of construction under the Internal Revenue Code and any applicable state tax laws. With regard only to such contributions, Transmission Owner shall not include a gross-up for income taxes in the amounts it charges Customer for the installation of the Network Upgrades and Direct Assignment Facilities unless (i) Transmission Owner has determined, in good faith, that the payments or property transfers made by Customer to Transmission Owner should be reported as income subject to taxation or (ii) any Governmental Authority directs Transmission Owner to report payments or property as income subject to taxation; provided, however, that Transmission Owner may require Customer to provide security for Network Upgrades, in a form reasonably acceptable to Transmission Owner (such as a parental guarantee or a letter of credit), in an amount equal to the cost consequences or any current tax liability under this Article. Customer shall reimburse Transmission Owner for such costs on a fully grossed-up basis, in accordance with this Article, within thirty (30) Calendar Days of receiving written notification from Transmission Owner of the amount due, including detail about how the amount was calculated.

The indemnification obligation shall terminate at the earlier of (1) the expiration of the ten-year testing period and the applicable statute of limitation, as it may be extended by Transmission Owner upon request of the IRS, to keep these years open for audit or adjustment, or (2) the occurrence of a subsequent taxable event and the payment of any related indemnification obligations as contemplated by this Article. Notwithstanding the foregoing provisions of this Article 3.3.1, and to the extent permitted by law, to the extent that the receipt of such payments by Transmission Owner is determined by any Governmental Authority to constitute income by Transmission Owner subject to taxation, Customer shall protect, indemnify and hold harmless Transmission Owner and its Affiliates, from all claims by any such Governmental Authority for any tax, interest and/or penalties associated with such determination. Upon receiving written notification of such determination from the Governmental Authority, Transmission Owner shall provide Customer with written notification within thirty (30) Calendar Days of such determination and notification. Transmission Owner, upon the timely written request by Customer and at Customer's expense, shall appeal, protest, seek abatement of, or otherwise oppose such determination. Transmission Owner reserves the right to make all decisions with regard to the prosecution of such appeal, protest, abatement or other contest, including the compromise or settlement of the claim; provided that Transmission Owner shall cooperate and consult in good faith with Customer regarding the conduct of such contest. Customer shall advance to Transmission Owner on a periodic basis as requested by Transmission Owner the estimated cost of prosecuting such appeal, protest, abatement or other contest. Customer shall not be required to pay Transmission Owner for the tax, interest and/or penalties prior to the seventh (7th) Calendar Day before the date on which Transmission Owner (i) is required to pay the tax, interest and/or penalties or other amount in lieu thereof pursuant to a compromise or settlement of the appeal, protest, abatement or other contest; (ii) is required to

pay the tax, interest and/or penalties as the result of a final, non-appealable order by a Governmental Authority; or (iii) is required to pay the tax, interest and/or penalties as a prerequisite to an appeal, protest, abatement or other contest. In the event such appeal, protest, abatement or other contest results in a determination that Transmission Owner is not liable for any portion of any tax, interest and/or penalties for which Customer has already made payment to Transmission Owner, Transmission Owner shall promptly refund to Customer any payment attributable to the amount determined to be non-taxable, plus any interest or other payments Transmission Owner receives or which Transmission Owner may be entitled with respect to such payment. In accordance with Article 6, Customer shall provide Transmission Owner with credit assurances sufficient to meet Customer's estimated liability for reimbursement of Transmission Owner for taxes, interest and/or penalties under this Section 3.3.1. Such estimated liability shall be stated in Appendix A.

To the extent that Transmission Owner is a limited liability company and not a corporation, and has elected to be taxed as a partnership, then the following shall apply: Transmission Owner represents, and the Parties acknowledge, that Transmission Owner is a limited liability company and is treated as a partnership for federal income tax purposes. Any payment made by Customer to Transmission Owner for Network Upgrades and Direct Assignment Facilities is to be treated as an upfront payment in accordance with Rev Proc 2005-35. It is anticipated by the Parties that any amounts paid by Customer to Transmission Owner for Network Upgrades and Direct Assignment Facilities will be reimbursed to Customer in accordance with the terms of this Agreement, provided Customer fulfills its obligations under this Agreement.

- 3.3.2 Private Letter Ruling.** At Customer's request and expense, Transmission Owner shall file with the IRS a request for a private letter ruling as to whether any property transferred or sums paid, or to be paid, by Customer to Transmission Owner under this Agreement are subject to federal income taxation. Customer will prepare the initial draft of the request for a private letter ruling, and will certify under penalties of perjury that all facts represented in such request are true and accurate to the best of Customer's knowledge. Transmission Owner and Customer shall cooperate in good faith with respect to the submission of such request.
- 3.3.3 Other Taxes.** Upon the timely request by Customer, and at Customer's sole expense, Transmission Owner shall appeal, protest, seek abatement of, or otherwise contest any tax (other than federal or state income tax) asserted or assessed against Transmission Owner for which Customer may be required to reimburse Transmission Owner under the terms of this Agreement. Customer shall pay to Transmission Owner on a periodic basis, as invoiced by Transmission Owner, Transmission Owner's documented reasonable costs of prosecuting such appeal, protest, abatement, or other contest. Customer and Transmission Owner shall cooperate in good faith with respect to any such contest. Unless the

payment of such taxes is a prerequisite to an appeal or abatement or cannot be deferred, no amount shall be payable by Customer to Transmission Owner for such taxes until they are assessed by a final, non-appealable order by any court or agency of competent jurisdiction. In the event that a tax payment is withheld and ultimately due and payable after appeal, Customer will be responsible for all taxes, interest and penalties, other than penalties attributable to any delay caused by Transmission Owner. Each Party shall cooperate with the other Parties to maintain each Party's tax status. Nothing in this Agreement is intended to adversely affect any Party's tax-exempt status with respect to the issuance of bonds including, but not limited to, Local Furnishing Bonds.

ARTICLE 4 FORCE MAJEURE

- 4.1 Notice.** The Party unable to carry out an obligation imposed on it by this Agreement due to a Force Majeure event shall notify the other Parties in writing or verbally with subsequent notice in writing within a reasonable time after the occurrence of the cause relied on.
- 4.2 Duration of Force Majeure.** Except as set forth in Article 4.3, no Party will be considered in Default as to any obligation under this Agreement if prevented from fulfilling the obligation due to an event of Force Majeure. A Party shall not be responsible for any non-performance or be considered in Breach or Default under this Agreement due to Force Majeure. A Party shall be excused from whatever performance is affected for only the duration of the Force Majeure event and while the Party exercises Reasonable Efforts to alleviate such situation. As soon as the non-performing Party is able to resume performance of its obligations excused as a result of the occurrence of Force Majeure, such Party shall give prompt notice thereof to the other Parties.
- 4.3 Obligation to Make Payments.** Any Party's obligation to make payments for services incurred shall not be suspended by Force Majeure.

ARTICLE 5 INFORMATION REPORTING

- 5.1 Information Reporting Obligations.** Each Party shall, in accordance with Good Utility Practice, promptly provide to the other Parties all relevant information, documents, or data regarding the Party's facilities and equipment which may reasonably be expected to pertain to the reliability of the other Party's facilities and equipment and which has been reasonably requested by the other Party.
- 5.2 Non-Force Majeure Reporting.** A Party shall notify the other Parties when it becomes aware of its inability to comply with the provisions of this Agreement for a reason other than Force Majeure. The Parties agree to cooperate with each other and provide necessary information regarding such inability to comply, including, but not limited to, the date, duration, reason for the inability to comply, and corrective actions taken or

planned to be taken with respect to such inability to comply. In the event of Force Majeure, a Party unable to comply with the provisions of this Agreement shall notify the other Parties in accordance with the provisions of Article 4.

ARTICLE 6

CREDITWORTHINESS, BILLING AND PAYMENTS

- 6.1 Creditworthiness.** By the earlier of (i) thirty (30) Calendar Days prior to the due date for Customer's first payment under the payment schedule specified in Appendix A or (ii) the first date specified in Appendix A for the ordering of equipment by Transmission Owner for installing the Network Upgrades and Direct Assignment Facilities, Customer shall provide Transmission Owner, at Transmission Owner's option, with a form of adequate assurance of creditworthiness reasonably acceptable to Transmission Owner. If the adequate assurance is a parental guarantee or surety bond, it must be made by an entity that meets the creditworthiness requirements of Transmission Owner, have terms and conditions reasonably acceptable to Transmission Owner and guarantee payment of the amount specified in the next paragraph of this Article 6.1. If the adequate assurance is a letter of credit, it must be issued by a bank reasonably acceptable to Transmission Owner, specify a reasonable expiration date and may provide that the maximum amount available to be drawn under the letter shall reduce on a monthly basis in accordance with the monthly payment schedule. The surety bond must be issued by an insurer reasonably acceptable to Transmission Owner, specify a reasonable expiration date and may provide that the maximum amount assured under the bond shall reduce on a monthly basis in accordance with the monthly payment schedule. After the Network Upgrades and Direct Assignment Facilities have been placed in service and until Customer fully compensates Transmission Owner for construction of the Network Upgrades and Direct Assignment Facilities, Customer shall, subject to the standards of this Article 6.1, maintain a parental guarantee, surety bond, letter of credit, or some other credit assurance sufficient to meet its monthly payment obligation under Article 3.2.1, as specified in the following paragraph. Customer's estimated liability under Article 3.2.1 is stated in Appendix A.

Customer shall maintain as of the first day of each month beginning on the due date for Customer's first payment under the payment schedule specified in Appendix A, and continuing through to the In-Service Date, a parental guarantee, surety bond or letter of credit in an amount sufficient to cover the applicable costs and cost commitments required of the Party responsible for building the facilities pursuant to the construction schedule developed in this Agreement for designing, engineering, seeking regulatory approval from any Governmental Authority, constructing, procuring and installing the facilities and shall be reduced on a dollar-for-dollar basis for payments made to Transmission Owner for these purposes as defined and established under Appendix A.

- 6.2 Invoice.** Each Party shall submit to the other Party, on a monthly basis, invoices of amounts due, if any, for the preceding month. Each invoice shall state the month to which the invoice applies and fully describe the services and equipment provided. The Parties may discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts a Party owes to the other

Party under this Agreement, including interest payments or credits, shall be netted so that only the net amount remaining due shall be paid by the owing Party.

- 6.3 Payment.** Invoices shall be rendered to the paying Party at the address specified by the Parties. The Party receiving the invoice shall pay the invoice within thirty (30) Calendar Days of receipt. All payments shall be made in immediately available funds payable to the other Party, or by wire transfer to a bank named and account designated by the invoicing Party. Payment of invoices by a Party will not constitute a waiver of any rights or claims that Party may have under this Agreement.
- 6.4 Final Invoice.** Within six (6) months after completion of the construction of the Network Upgrades and Direct Assignment Facilities, Transmission Owner shall provide an invoice of the final cost of the construction of the Network Upgrades and Direct Assignment Facilities and shall set forth such costs in sufficient detail to enable Customer to compare the actual costs with the estimates and to ascertain deviations, if any, from the cost estimates. Transmission Owner shall refund, with interest (calculated in accordance with 18 C.F.R. Section 35.19a(a)(2)(iii)), to Customer any amount by which the actual payment by Customer for estimated costs exceeds the actual costs of construction within thirty (30) Calendar Days of the issuance of such final construction invoice.
- 6.5 Interest.** Interest on any unpaid amounts shall be calculated in accordance with 18 C.F.R. § 35.19a(a)(2)(iii).
- 6.6 Payment During Dispute.** In the event of a billing dispute among the Parties, Transmission Owner shall continue to construct the Network Upgrades and Direct Assignment Facilities under this Agreement as long as Customer: (i) continues to make all payments not in dispute; and (ii) pays to Transmission Provider or Transmission Owner or into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If Customer fails to meet these two requirements, then Transmission Provider may or, at Transmission Owner's request upon Customer's failure to pay Transmission Owner, shall provide notice to Customer of a Default pursuant to Article 9. Within thirty (30) Calendar Days after the resolution of the dispute, the Party that owes money to another Party shall pay the amount due with interest calculated in accord with the methodology set forth in 18 C.F.R. § 35.19a(a)(2)(iii).

ARTICLE 7 ASSIGNMENT

- 7.1 Assignment.** This Agreement may be assigned by any Party only with the written consent of the other Parties; provided that a Party may assign this Agreement without the consent of the other Parties to any affiliate of the assigning Party with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this Agreement; and provided further that Customer shall have the right to assign this Agreement, without the consent of either Transmission Provider or Transmission Owner, for collateral security purposes to aid in providing

financing for the Facility, provided that Customer will promptly notify Transmission Provider and Transmission Owner of any such assignment. Any financing arrangement entered into by Customer pursuant to this Article will provide that prior to or upon the exercise of the secured Party's, trustee's or assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify Transmission Provider and Transmission Owner of the date and particulars of any such exercise of assignment right(s), including providing Transmission Provider and Transmission Owner with proof that it meets the requirements of Article 6.1. Any attempted assignment that violates this Article is void and ineffective. Any assignment under this Agreement shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.

ARTICLE 8 INDEMNITY

8.1 General. To the extent permitted by law, a Party (the "Indemnifying Party") shall at all times indemnify, defend, and hold the other Parties (each an "Indemnified Party") harmless from Loss, only as provided in the Tariff.

8.1.1 Indemnified Party. If an Indemnified Party is entitled to indemnification under this Article 8 as a result of a claim by a third party, and the Indemnifying Party fails, after notice and reasonable opportunity to proceed under Article 8.1, to assume the defense of such claim, such Indemnified Party may at the expense of the Indemnifying Party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.

8.1.2 Indemnifying Party. If an Indemnifying Party is obligated to indemnify and hold any Indemnified Party harmless under this Article 8, the amount owing to the Indemnified Party shall be the amount of such Indemnified Party's actual Loss, net of any insurance or other recovery.

8.1.3 Indemnity Procedures. Promptly after receipt by an Indemnified Party of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in Article 8.1 may apply, the Indemnified Party shall notify the Indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a Party's indemnification obligation unless such failure or delay is materially prejudicial to the Indemnifying Party.

The Indemnifying Party shall have the right to assume the defense thereof with counsel designated by such Indemnifying Party and reasonably satisfactory to the Indemnified Party. If the defendants in any such action include one or more Indemnified Parties and the Indemnifying Party and if the Indemnified Party reasonably concludes that there may be legal defenses available to it and/or other Indemnified Parties which are different from or additional to those available to the

Indemnifying Party, the Indemnified Party shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on its own behalf. In such instances, the Indemnifying Party shall only be required to pay the fees and expenses of one additional attorney to represent an Indemnified Party or Indemnified Parties having such differing or additional legal defenses.

The Indemnified Party shall be entitled, at its expense, to participate in any such action, suit or proceeding, the defense of which has been assumed by the Indemnifying Party. Notwithstanding the foregoing, the Indemnifying Party (i) shall not be entitled to assume and control the defense of any such action, suit or proceedings if and to the extent that, in the opinion of the Indemnified Party and its counsel, such action, suit or proceeding involves the potential imposition of criminal liability on the Indemnified Party, or there exists a conflict or adversity of interest between the Indemnified Party and the Indemnifying Party, in such event the Indemnifying Party shall pay the reasonable expenses of the Indemnified Party, and (ii) shall not settle or consent to the entry of any judgment in any action, suit or proceeding without the consent of the Indemnified Party, which shall not be reasonably withheld, conditioned or delayed.

- 8.2 Consequential Damages.** In no event shall any Party be liable to any other Party under any provision of this Agreement for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to another Party under another agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.

ARTICLE 9 BREACH, CURE AND DEFAULT

- 9.1 Events of Breach.** A Breach of this Agreement shall include:

- (a) The failure to pay any amount when due;
- (b) The failure to comply with any material term or condition of this Agreement, including but not limited to any material Breach of a representation, warranty or covenant made in this Agreement;
- (c) If a Party (i) is adjudicated bankrupt; (ii) files a voluntary petition in bankruptcy under any provision of any federal or state bankruptcy law or shall consent to the filing of any bankruptcy or reorganization petition against it under any similar law; (iii) makes a general assignment for the benefit of its creditors; or (iv) consents to the appointment of a receiver, trustee or liquidator;

- (d) Assignment of this Agreement in a manner inconsistent with the terms of this Agreement;
- (e) Failure of a Party to provide such access rights, or a Party's attempt to revoke access or terminate such access rights, as provided under this Agreement or any related agreements.
- (f) Failure of a Party to provide information or data to another Party as required under this Agreement, provided the Party entitled to the information or data under this Agreement requires such information or data to satisfy its obligations under this Agreement.

9.2 Notice of Breach, Cure and Default. Upon the occurrence of an event of Breach, the Party not in Breach, when it becomes aware of the Breach, shall give written notice of the Breach to the Breaching Party and to any other person representing a Party to this Agreement identified in writing to the other Party in advance. Such notice shall set forth, in reasonable detail, the nature of the Breach, and where known and applicable, the steps necessary to cure such Breach.

9.2.1 Upon the occurrence described in part (c) of Article 9.1, the Party experiencing such occurrence shall notify the other Party in writing within seven (7) Calendar Days after the commencement of such occurrence. Upon receiving written notice of the Breach hereunder, the Breaching Party shall have a period to cure such Breach (sometimes hereinafter referred as ("Cure Period") which shall be thirty (30) Calendar Days unless such Breach is due to an occurrence under Article 9.1(a) or (c) in which case the cure period will be five (5) Business Days.

9.2.2 If the Breach is such that it cannot be cured within the Cure Period, the Breaching Party will commence in good faith all steps as are reasonable and appropriate to cure the Breach within such Cure Period and thereafter diligently pursue such action to completion. In the event the Breaching Party fails to:

- (a) cure the Breach, or to commence reasonable and appropriate steps to cure the Breach, within the Cure Period; or,
- (b) completely cure the Breach within sixty (60) Calendar Days if the Breach occurs pursuant to Article 9.1(b), (d), (e) or (f),

the Breaching Party will be in Default of this Agreement and the non-Breaching Parties may, at their option, either in concert or individually, (1) act to terminate this Agreement for cause by notifying the other Parties in writing, or (2) take whatever action at law or in equity as may appear necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreement, or covenants under this Agreement.

- 9.3 Rights in the Event of Default.** Notwithstanding the foregoing, upon the occurrence of an event of Default, any non-Defaulting Party shall be entitled to exercise all rights and remedies it may have in equity or at law.

ARTICLE 10

TERMINATION OF AGREEMENT

- 10.1 Expiration of Term.** Except as otherwise specified in this Article 10, the Parties' obligations under this Agreement shall terminate at the conclusion of the term of this Agreement.
- 10.2 Termination.** In addition to the termination provisions set forth in Article 2.2, a Party may terminate this Agreement upon the Default of another Party in accordance with this Agreement. Subject to the limitations set forth in Article 10.3, in the event of a Default, a non-Defaulting Party may terminate this Agreement only upon the later of (i) its giving of written notice of termination to the other Parties; and (ii) unless no longer required by FERC, the filing at FERC of a notice of termination for this Agreement, which filing must be accepted for filing by FERC.
- 10.3 Disposition of Facilities Upon Termination of Agreement.**
- 10.3.1 Transmission Provider and Transmission Owner Obligations.** Upon termination of this Agreement, unless otherwise agreed by the Parties in writing, Transmission Owner:
- (a) shall, prior to the construction and installation of any portion of the Network Upgrades and Direct Assignment Facilities and to the extent possible, cancel any pending orders of, or return, such equipment or material for such Network Upgrades and Direct Assignment Facilities;
 - (b) may keep in place any portion of the Network Upgrades and Direct Assignment Facilities already constructed and installed; and,
 - (c) shall perform such work as may be necessary to ensure the safety of persons and property and to preserve the integrity of the Transmission System (*e.g.*, construction demobilization to return the system to its original state, wind-up work).
- 10.3.2 Customer Obligations.** Upon billing by Transmission Owner, Customer shall reimburse Transmission Owner for any costs incurred by Transmission Owner in performance of the actions required or permitted by Article 10.3.1 and for the cost of any Network Upgrades and Direct Assignment Facilities described in Appendix A. Transmission Owner and Transmission Provider shall use Reasonable Efforts to minimize costs and shall offset the amounts owed by any salvage value of facilities, if applicable. Customer shall pay these costs pursuant to Article 6.3 of this Agreement.

10.3.3 Pre-construction or Installation. Upon termination of this Agreement and prior to the construction and installation of any portion of the Network Upgrades and Direct Assignment Facilities, Transmission Owner may, at its option, retain any portion of such Network Upgrades and Direct Assignment Facilities not cancelled or returned in accordance with Article 10.3.1(a), in which case Transmission Owner shall be responsible for all costs associated with procuring such Network Upgrades and Direct Assignment Facilities. To the extent that Customer has already paid Transmission Owner for any or all of such costs, Transmission Owner shall transfer such amounts to the Customer. If Transmission Owner elects to not retain any portion of such facilities, Transmission Owner shall convey and make available to Customer such facilities as soon as practicable after Customer's payment for such facilities.

10.4 Survival of Rights. Termination or expiration of this Agreement shall not relieve any Party of any of its liabilities and obligations arising hereunder prior to the date termination becomes effective, and each Party may take whatever judicial or administrative actions as appear necessary or desirable to enforce its rights hereunder. The applicable provisions of this Agreement will continue in effect after expiration, or early termination hereof to the extent necessary to provide for (A) final billings, billing adjustments and other billing procedures set forth in this Agreement; (B) the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect; and (C) the confidentiality provisions set forth in Article 12.

ARTICLE 11 SUBCONTRACTORS

11.1 Subcontractors. Nothing in this Agreement shall prevent a Party from utilizing the services of subcontractors, as it deems appropriate, to perform its obligations under this Agreement; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services and each Party shall remain primarily liable to the other Parties for the performance of such subcontractor.

11.1.1 Responsibility of Principal. The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. In accordance with the provisions of this Agreement, each Party shall be fully responsible to the other Parties for the acts or omissions of any subcontractor it hires as if no subcontract had been made. Any applicable obligation imposed by this Agreement upon a Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

11.1.2 No Third-Party Beneficiary. Except as may be specifically set forth to the contrary herein, no subcontractor or any other party is intended to be, nor will it be deemed to be, a third-party beneficiary of this Agreement.

11.1.3 No Limitation by Insurance. The obligations under this Article 11 will not be limited in any way by any limitation of any insurance policies or coverages, including any subcontractor's insurance.

ARTICLE 12 CONFIDENTIALITY

12.1 Confidentiality. Confidential Information shall include, without limitation, all information relating to a Party's technology, research and development, business affairs, and pricing, and any information supplied by a Party to another Party prior to the execution of this Agreement.

Information is Confidential Information only if it is clearly designated or marked in writing as confidential on the face of the document, or, if the information is conveyed orally or by inspection, if the Party providing the information orally informs the Party receiving the information that the information is confidential. The Parties shall maintain as confidential any information that is provided and identified by a Party as Critical Energy Infrastructure Information (CEII), as that term is defined in 18 C.F.R. Section 388.113(c).

Such confidentiality will be maintained in accordance with this Article 12. If requested by the receiving Party, the disclosing Party shall provide in writing, the basis for asserting that the information referred to in this Article warrants confidential treatment, and the requesting Party may disclose such writing to the appropriate Governmental Authority. Each Party shall be responsible for the costs associated with affording confidential treatment to its information.

12.1.1 Term. During the term of this Agreement, and for a period of three (3) years after the expiration or termination of this Agreement, except as otherwise provided in this Article 12 or with regard to CEII, each Party shall hold in confidence and shall not disclose to any person Confidential Information. CEII shall be treated in accordance with Commission policies and regulations.

12.1.2 Scope. Confidential Information shall not include information that the receiving Party can demonstrate: (1) is generally available to the public other than as a result of a disclosure by the receiving Party; (2) was in the lawful possession of the receiving Party on a non-confidential basis before receiving it from the disclosing Party; (3) was supplied to the receiving Party without restriction by a non-Party, who, to the knowledge of the receiving Party after due inquiry, was under no obligation to the disclosing Party to keep such information confidential; (4) was independently developed by the receiving Party without reference to Confidential Information of the disclosing Party; (5) is, or becomes, publicly known, through no wrongful act or omission of the receiving Party or Breach of this Agreement; or (6) is required, in accordance with Article 12.1.7 of this Agreement, to be disclosed by any Governmental Authority or is otherwise

required to be disclosed by law or subpoena, or is necessary in any legal proceeding establishing rights and obligations under this Agreement. Information designated as Confidential Information will no longer be deemed confidential if the Party that designated the information as confidential notifies the receiving Party that it no longer is confidential.

- 12.1.3 Release of Confidential Information.** No Party shall release or disclose Confidential Information to any other person, except to its Affiliates (limited by the Standards of Conduct requirements), subcontractors, employees, agents, consultants, or to non-Parties who may be or are considering providing financing to or equity participation with Customer, or to potential purchasers or assignees of Customer, on a need-to-know basis in connection with this Agreement, unless such person has first been advised of the confidentiality provisions of this Article 12 and has agreed to comply with such provisions. Notwithstanding the foregoing, a Party providing Confidential Information to any person shall remain primarily responsible for any release of Confidential Information in contravention of this Article 12.
- 12.1.4 Rights.** Each Party retains all rights, title, and interest in the Confidential Information that it discloses to the receiving Party. The disclosure by a Party to the receiving Party of Confidential Information shall not be deemed a waiver by the disclosing Party or any other person or entity of the right to protect the Confidential Information from public disclosure.
- 12.1.5 No Warranties.** By providing Confidential Information, no Party makes any warranties or representations as to its accuracy or completeness. In addition, by supplying Confidential Information, no Party obligates itself to provide any particular information or Confidential Information to another Party nor to enter into any further agreements or proceed with any other relationship or joint venture.
- 12.1.6 Standard of Care.** Each Party shall use at least the same standard of care to protect Confidential Information it receives as it uses to protect its own Confidential Information from unauthorized disclosure, publication or dissemination. Each Party may use Confidential Information solely to fulfill its obligations to another Party under this Agreement or its regulatory requirements.
- 12.1.7 Order of Disclosure.** If a court or a Government Authority or entity with the right, power, and apparent authority to do so requests or requires any Party, by subpoena, oral deposition, interrogatories, requests for production of documents, administrative order, or otherwise, to disclose Confidential Information, that Party shall provide the disclosing Party with prompt notice of such request(s) or requirement(s) so that the disclosing Party may seek an appropriate protective order or waive compliance with the terms of this Agreement. Notwithstanding the absence of a protective order or waiver, the Party may disclose such Confidential Information which, in the opinion of its counsel, the Party is legally

compelled to disclose. Each Party will use Reasonable Efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished.

12.1.8 Termination of Agreement. Upon termination of this Agreement for any reason, each Party shall, within ten (10) Business Days of receipt of a written request from another Party, use Reasonable Efforts to destroy, erase, or delete (with such destruction, erasure, and deletion certified in writing to the requesting Party) or return to the requesting Party any and all written or electronic Confidential Information received from the requesting Party, except that each Party may keep one copy for archival purposes, provided that the obligation to treat it as Confidential Information in accordance with this Article 12 shall survive such termination.

12.1.9 Remedies. The Parties agree that monetary damages would be inadequate to compensate a Party for another Party's Breach of its obligations under this Article 12. Each Party accordingly agrees that the disclosing Party shall be entitled to equitable relief, by way of injunction or otherwise, if the receiving Party Breaches or threatens to Breach its obligations under this Article 12, which equitable relief shall be granted without bond or proof of damages, and the breaching Party shall not plead in defense that there would be an adequate remedy at law. Such remedy shall not be deemed an exclusive remedy for the Breach of this Article 12, but shall be in addition to all other remedies available at law or in equity. The Parties further acknowledge and agree that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope. No Party, however, shall be liable for indirect, incidental, or consequential or punitive damages of any nature or kind resulting from or arising in connection with this Article 12.

12.1.10 Disclosure to FERC, its Staff or a State. Notwithstanding anything in this Article 12 to the contrary, and pursuant to 18 C.F.R. § 1b.20, if FERC or its staff, during the course of an investigation or otherwise, requests information from a Party that is otherwise required to be maintained in confidence pursuant to this Agreement, the Party shall provide the requested information to FERC or its staff, within the time provided for in the request for information. In providing the information to FERC or its staff, the Party must, consistent with 18 C.F.R. § 388.112, request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. Parties are prohibited from notifying the other Parties to this Agreement prior to the release of the Confidential Information to FERC or its staff. The Party shall notify the other Parties to the Agreement when it is notified by FERC or its staff that a request to release Confidential Information has been received by FERC, at which time any of the Parties may respond before such information would be made public, pursuant to 18 C.F.R. § 388.112. Requests from a state regulatory body conducting a confidential

investigation shall be treated in a similar manner if consistent with the applicable state rules and regulations.

12.1.11 Subject to the exception in Article 12.1.10, any information that a disclosing Party claims is competitively sensitive, commercial or financial information under this Agreement shall not be disclosed by the receiving Party to any person not employed or retained by the receiving Party, except to the extent disclosure is (i) required by law; (ii) reasonably deemed by the disclosing Party to be required to be disclosed in connection with a dispute between or among the Parties, or the defense of litigation or dispute; (iii) otherwise permitted by consent of the disclosing Party, such consent not to be unreasonably withheld; or (iv) necessary to fulfill its obligations under this Agreement or as the Regional Transmission Organization or a Local Balancing Authority operator including disclosing the Confidential Information to a regional or national reliability organization. The Party asserting confidentiality shall notify the receiving Party in writing of the information that Party claims is confidential. Prior to any disclosures of that Party's Confidential Information under this subparagraph, or if any non-Party or Governmental Authority makes any request or demand for any of the information described in this subparagraph, the Party who received the Confidential Information from the disclosing Party agrees to promptly notify the disclosing Party in writing and agrees to assert confidentiality and cooperate with the disclosing Party in seeking to protect the Confidential Information from public disclosure by confidentiality agreement, protective order or other reasonable measures.

ARTICLE 13

INFORMATION ACCESS AND AUDIT RIGHTS

- 13.1 Information Access.** Each Party shall make available to the other Parties information necessary to verify the costs incurred by the other Parties for which the requesting Party is responsible under this Agreement and carry out obligations and responsibilities under this Agreement, provided that the Parties shall not use such information for purposes other than those set forth in this Article 13.1 and to enforce their rights under this Agreement.
- 13.2 Audit Rights.** Subject to the requirements of confidentiality under Article 12 of this Agreement, the accounts and records related to the design, engineering, procurement, and construction of the Network Upgrades and Direct Assignment Facilities shall be subject to audit during the period of this Agreement and for a period of twenty-four (24) months following the Transmission Owner's issuance of a final invoice in accordance with Article 6.4. Customer at its expense shall have the right, during normal business hours, and upon prior reasonable notice to the other Parties, to audit such accounts and records. Any audit authorized by this Article 13.2 shall be performed at the offices where such accounts and records are maintained and shall be limited to those portions of such accounts and records that relate to obligations under this Agreement.

ARTICLE 14 DISPUTES

- 14.1 Submission.** Any claim or dispute, which a Party may have against another Party, arising out of this Agreement shall be submitted for resolution in accordance with the dispute resolution provisions of the Tariff.
- 14.2 Rights under the Federal Power Act.** Nothing in this Article 14 shall restrict the rights of any Party to file a complaint or a petition with FERC under relevant provisions of the Federal Power Act.
- 14.3 Equitable Remedies.** Nothing in this Article shall prevent a Party from pursuing or seeking any equitable remedy available to it under Applicable Laws and Regulations, at any time, before a Governmental Authority.

ARTICLE 15 NOTICES

- 15.1 General.** Any notice, demand or request required or permitted to be given by a Party to another Party and any instrument required or permitted to be tendered or delivered by a Party in writing to another Party may be so given, tendered or delivered, as the case may be, by depositing the same with the United States Postal Service with postage prepaid, for transmission by certified or registered mail, addressed to the Parties, or personally delivered to the Parties, at the address set out below:

To Transmission Provider:

MISO

Attn: Director, Resource Utilization
720 City Center Drive
Carmel, IN 46032

To Transmission Owner:

Minnesota Power

Vice President, Transmission & Distribution
30 West Superior Street
Duluth, MN 55802

To Customer:

Minnesota Power

Vice President, Strategy and Planning
30 West Superior Street
Duluth, MN 55802

- 15.2 Billings and Payments.** Billings and payments shall be sent to the addresses shown in Article 15.1 unless otherwise agreed to by the Parties.

- 15.3 Alternative Forms of Notice.** Any notice or request required or permitted to be given by a Party to another Party and not required by this Agreement to be given in writing may be so given by telephone, facsimile or email to the telephone numbers and email addresses set out below:

To Transmission Provider:

MISO

Voice telephone – (317) 249-5700

Facsimile telephone – (317) 249-5358

Email address – misotap@misoenergy.org or

MISOTransmissionAccessPlanning@misoenergy.org

To Transmission Owner:

Minnesota Power

Director – System Operations, Performance & Compliance

Voice telephone – (218) 723-7414

Email address-lfrisk@mnpower.com or

MPTransmissioninformationNotifications@mnpower.com

To Customer:

Minnesota Power

RTO Coordination Manager

Voice telephone – (218) 723-7466

Email address – rnyholm@mnpower.com

- 15.4 DUNS #.** If Transmission Owner and Customer have not obtained DUNS numbers by the time this Agreement is executed, Transmission Owner and Customer will forward their DUNS numbers within five (5) Business Days of having obtained such numbers to Transmission Provider by facsimile telephone or email to the fax number or email set out below:

Transmission Owner

DUNS Number: 617232889

Customer

DUNS Number: 617232889

- 15.5 Notification of In-Service Date.** Transmission Owner will serve to Transmission Provider a copy of Appendix B as forwarded to Customer on the same day to the address shown in Article 15.1, and by facsimile telephone to the numbers set out below:

To Transmission Provider:

MISO

Facsimile telephone – (317) 249-5703

And copy to

MISO

Attn: Director, Resource Utilization

720 City Center Drive

Carmel, IN 46032

ARTICLE 16 MISCELLANEOUS

- 16.1 Waiver.** Except as otherwise provided for in this Agreement, the failure of any Party to comply with any obligation, covenant, agreement, or condition herein may be waived by the Parties entitled to the benefits thereof only by a written instrument signed by the Parties granting such waiver. Any waiver at any time by a Party of its rights with respect to a Default under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall not be deemed a waiver or continuing waiver with respect to any subsequent Default or other matter.
- 16.2 Governing Law.** The validity, interpretation and performance of this Agreement and each of its provisions shall be governed by the laws of the state of Minnesota where approximately 50 percent of the Network Upgrades and/or Direct Assignment Facilities referenced in Appendix A are located without regard to its conflicts of law principles.
- 16.3 Headings Not to Affect Meaning.** The descriptive headings of the various Sections and Articles of this Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms and provisions hereof.
- 16.4 Amendments and Rights Under the Federal Power Act.** Transmission Provider shall have the right to make a unilateral filing with FERC to modify this Agreement with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation under Section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder, and Transmission Owner and Customer shall have the right to make a unilateral filing with FERC to modify this Agreement pursuant to Section 206 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder; provided, however, that each Party shall have the right to protest any such filing and to participate fully in any proceeding before FERC in which such modifications may be considered. Nothing in this Agreement shall limit the rights of the Parties or of FERC under Sections 205 or 206 of the Federal Power Act and FERC's rules and regulations thereunder, except to the extent that the Parties otherwise mutually agree as provided herein.
- 16.5 Entire Agreement.** This Agreement, together with all the exhibits, constitutes the final and entire written agreement among the Parties hereto with reference to the subject matter hereof, and is a complete and exclusive statement of those terms and conditions and supersedes all prior negotiations, representations or agreements, either written or oral, with respect to the specific subject matter of this Agreement. No change or modification as to any of the provisions hereof shall be binding on any Party unless reduced to writing and approved by the duly authorized officer or agent of Customer, Transmission Owner, and Transmission Provider.
- 16.6 Counterparts.** This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

- 16.7 Binding Effect.** This Agreement and the rights and obligations hereof, shall be binding upon and shall inure to the benefit of the Parties hereto and their successors and assigns. No person or party shall have any rights, benefits or interests, direct or indirect, arising from this Agreement except the Parties hereto, their successors and authorized assigns. The Parties expressly disclaim any intent to create any rights in any person or party as a third party beneficiary to this Agreement.
- 16.8 Conflicts.** In the event of a conflict between the body of this Agreement and any attachment, appendix or exhibit hereto, the terms and provisions of the body of this Agreement shall prevail and be deemed to be the final intent of the Parties.
- 16.9 Regulatory Requirements.** Each Party's obligations under this Agreement shall be subject to its receipt of any required approval or certificate from one or more Governmental Authorities in the form and substance satisfactory to the receiving Party, or the Party making any required filings with, or providing notice to, such Governmental Authorities, and the expiration of any time period associated therewith. Each Party shall in good faith seek these other approvals as soon as is reasonably practicable.

ARTICLE 17

REPRESENTATIONS AND WARRANTIES

- 17.1 General.** Each Party hereby represents, warrants and covenants as follows with these representations, warranties, and covenants effective as to the Party during the full time this Agreement is effective:
- 17.1.1. Good Standing.** Such Party is duly organized or formed, as applicable, validity existing and in good standing under the laws of its state of organization or formation, and is in good standing under the laws of the respective state(s) of its organization as stated in the preamble of this Agreement.
- 17.1.2 Authority.** Such Party has the right, power and authority to enter into this Agreement, to become a party hereto and to perform its obligations hereunder, and this Agreement is a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms.
- 17.1.3 No Conflict.** The execution, delivery and performance of this Agreement does not violate or conflict with the organizational or formation documents, or bylaws or operating agreement, of such Party, or any judgment, license, permit or order or material agreement or instrument applicable to or binding upon such Party or any of its assets.
- 17.1.4 Consent and Approval.** That it has sought or obtained, or, in accordance with this Agreement will seek or obtain, each consent, approval, authorization or order of, or acceptance of a filing with, or notice to, any Governmental Authority with jurisdiction concerning this Agreement, in connection with the execution, delivery and performance of this Agreement.

17.1.5 Solvency. That such Party is financially solvent.

IN WITNESS WHEREOF, the Parties have executed this Agreement in multiple originals, each of which shall constitute and be an original Agreement among the Parties.

Transmission Provider

Midcontinent Independent System Operator, Inc.

By: 

February 28, 2024 kkh

Name: Aubrey Johnson

Title: VP, System Planning & Competitive Development

Transmission Owner

Minnesota Power

By: 

Name: Josh Skelton

Title: Chief Operating Officer - MP

Customer

Minnesota Power

By: 

Name: Bethany M. Owen

Title: Chief Executive Officer

Facilities Construction Agreement
APPENDIX A
NETWORK UPGRADES, COST ESTIMATES AND RESPONSIBILITY,
TRANSMISSION CREDITS, CONSTRUCTION SCHEDULE AND MONTHLY
PAYMENT SCHEDULE

This Appendix A is a part of the Facilities Construction Agreement between Customer, Transmission Owner, and Transmission Provider. Terms used in this Appendix A with initial capitalization not defined in this Appendix A shall have the meaning set out in the Agreement

The upgrades required to be made by the Transmission Owner under this Agreement because of the Transmission Service Request include Direct Assignment Facilities and Network Upgrades, as defined in Module B and Attachment N of the Tariff. The Network Upgrades under this Agreement are governed by Module B and Attachment N of the Tariff.

1.1 Network Upgrades to be installed by Transmission Owner.

1.1.1 Transmission Owner Substation Network Upgrades: To modernize the terminals of the existing Square Butte HVDC Line and implement the latest voltage source converter (“VSC”) HVDC technology, new buildings and electrical infrastructure need to be constructed on a new site near the existing Center and Arrowhead HVDC terminals. Due to the specialized nature of the technology, the new VSC HVDC converter stations will be delivered as turnkey projects by the original equipment manufacturer (“OEM”). The scope of supply for the HVDC OEM will include the relocated converter stations, including valves, converter transformers, smoothing reactors, DC equipment, AC circuit breakers, control & protection, and all associated facilities. The new VSC HVDC converter stations will be designed to interconnect at 345 kV on the AC system side. To accommodate interconnection of the new VSC HVDC converter stations, new AC interconnection facilities will be constructed including new 345/230 kV substations, 345 kV transmission lines, and 230 kV transmission lines. New AC interconnection facilities are listed below.

In Minnesota:

- Construction of a new St. Louis County 345/230 kV Substation located less than one mile west of the Arrowhead Substation
- Construction of a new 345 kV transmission line from the HVDC converter station to the St. Louis County Substation
- Construction of two parallel 230 kV lines from the St. Louis County Substation to the existing Arrowhead Substation
- At Arrowhead Substation, the two new 230 kV lines will be interconnected to the existing HVDC Pole 1 and Pole 2 bus positions, which will be rebuilt with higher-capacity bus and electrical equipment to accommodate the increased HVDC capacity.
- A short portion of the existing ± 250 kV HVDC Line in Minnesota will be reconfigured to terminate at the new HVDC converter station.

In North Dakota:

- Establishment of a new Nelson Lake 230 kV Switching Station to tie together the existing Minnesota Power Square Butte East – Bison 230 kV Line with the existing Great River Energy Square Butte – Stanton 230 kV Line.
- Construction of a second 230 kV circuit between Nelson Lake and Square Butte East using existing double-circuit capable structures.
- Addition of a 230 kV breaker at the Square Butte East Substation to accommodate the second Nelson Lake – Square Butte East 230 kV circuit
- Expansion of the Nelson Lake 230 kV Switching Station to add a 345/230 kV transformer and 345 kV line entrance.
- Construction of a new 345 kV line from Nelson Lake to the new HVDC converter station
- Construction of a new 345 kV substation at the new HVDC converter station site
- A portion of the existing ± 250 kV HVDC Line in North Dakota will need to be reconfigured to terminate at the new HVDC converter station.

Additional equipment upgrades may be deemed necessary by the Transmission Owner or the HVDC OEM during the specification, detailed design, and engineering phase of the project.

1.1.2 Transmission Owner Transmission Line Network Upgrades: The upgrades necessary to increase the capacity of the HVDC transmission line from 550 MW to 900 MW are likely to consist primarily of replacing existing structures with taller structures to increase conductor-to-ground clearance at the higher operating temperature. A short segment of the transmission line with a smaller conductor will need to be rebuilt with a larger conductor.

1.1.3 Transmission Owner Transmission Line Permitting: Due to the relocation of the converter stations and the length of new AC interconnection facilities required to re-connect to the existing system, the HVDC Modernization Project will require state-level permits in both Minnesota and North Dakota. In Minnesota, a Certificate of Need and Route Permit will be required from the State of Minnesota. In North Dakota, a Certificate of Corridor Compatibility and a Route Permit will be required. Minnesota Power will obtain the necessary permits in both states

1.1.4 Cost Estimates and Responsibility. The estimated total cost for the Network Upgrades is \$878,000,000. These costs are shared by the Transmission Owner and Customer. **The estimated cost to be paid by the Customer for Transmission Service Requests 90481026 & 95418167 is \$205,000,000.** The Customer(s) hereby acknowledge and agree that the costs, expenses, and charges set out in Table 1 are only an estimate and that the Customer(s) shall pay the Transmission Owner for their allocated amounts for all costs, expenses, and charges. Updated estimates will be provided annually by the Transmission Owners on request from the Customer.

This is detailed below in Table 1 and is subject to applicable Tax Gross.

Table 1: Network Upgrades Cost Details

HVDC Modernization Project	Total Estimated Cost	Directly Assigned Cost Assigned to Transmission Service Requests #90481026 & #95418167
Converter Station Replacement	\$705,000,000	\$165,000,000
Interconnections to AC System	\$115,000,000	\$15,000,000
Transmission Line Modification	\$58,000,000	\$25,000,000
Internal & Professional Services	Included	Included
Total (in 2022 dollars)	\$878,000,000	\$205,000,000

1.1.4.1 Major Material List of Transmission Owner's Network Upgrades –
See Exhibit C2

1.2 Direct Assignment Facilities – None.

1.3 First Equipment Order (including permitting). See Table 2 below.

1.3.1. Permitting And Land Rights – Transmission Owner Network Upgrades –
See Section 1.8.

1.4 Transmission Credits. See Article 3.2.2 of the Agreement.

1.5 Construction Schedule. Where applicable, construction of the Transmission Owner Network Upgrades and Special Protection Facilities is scheduled as follows and will be periodically updated as necessary:

Table 2: Transmission Owner Construction Activities

Milestone Number	Milestone Description	Start Date
1.	Facilities Construction Agreement Executed.	Aug/Sep-2023
2.	Minnesota Certificate of Need & Route Permit Applications Filed.	Jun-2023

3.	North Dakota Certificate of Corridor Compatibility and Route Permit Applications Filed.	Oct-2023
4.	Begin Front End Engineering & Design with HVDC OEM.	Jan-2024
5.	Major Permits Received in Minnesota & North Dakota.	Jul-2024
6.	Order Long Leadtime Equipment for AC Substations.	Nov-2024
7.	Clearing Begins.	Jan-2025
8.	Construction of AC Interconnection Facilities Begins.	May-2025
9.	Construction of HVDC Transmission Line Upgrades Begins.	Aug-2025
10.	Receive Firm Proposal from HVDC OEM.	Aug-2026
11.	Execute Firm EPC Contract with HVDC OEM.	Oct-2026
12.	Construction of HVDC Converter Stations Begins.	Oct-2027
13.	In-Service Date.	Apr-2030

Note: The construction schedule assumes that the Transmission Owner has obtained final authorizations and security from Customer and all necessary permits from Governmental Authorities as necessary prerequisites to commence construction of any of the Network Upgrades and Special Protection Facilities.

1.6 Payment Schedule.

1.6.1 Timing of and Adjustments to Customer's Payments and Security.

1.6.2 Monthly Payment Schedule. Following approval of the state permits set forth in Section 1.2.3, in accordance with Attachment N, the Customer will begin paying a monthly dollar assessment. Monthly payments by the Customer will continue until Transmission Owner has recovered the cost of all Directly Assigned Facilities and Transmission Owner Network Upgrades.

A Customer that fails to make payments when due will be given a Breach notice. Unless the Breach is cured in accordance with Article 9 of this agreement, the Transmission Owner is relieved from performing under this Agreement. Failure by any Customer to comply with Article 9.2.2(A) or 9.2.2(B) relative to such Breach may, pursuant to Article 9.2.2 of the Agreement, result in termination of the Agreement as to that Customer.

1.6.3 Security Amount. Not later than thirty (30) Days after Transmission Owner has received all Certificate of Need approvals, Customer shall provide MP security in the amount of Two Hundred Five Million Dollars (\$205,000,000) consisting of either or a combination of a letter of credit and/or cash escrow as set forth under

Section 1.7.4 (“Initial Development Security”). Sixty (60) Days after termination of this Agreement, except as set forth in Section 1.7.5, Transmission Owner shall promptly return the Initial Development Security to Customer.

1.6.4 Security Characteristics and Draw

1.6.4.1 Except as set forth under Section 1.7.3.1, Security shall be composed of either a Guaranty, a letter of credit as described in Section 1.7.4 or a cash escrow as described in Section 1.7.4.2, at Customer’s option, or a combination of these options as long as the total amount of Security is not less than the amount then required. Notwithstanding the foregoing, the Guaranty amount may not comprise more than fifty percent (50%) of the overall total amount of Security, provided that if Customer has delivered a notice reducing the amount of Security required pursuant to Section 1.7.7, then the Guaranty may comprise up to 100% of the overall total amount of Security at the Guarantor’s option. Customer shall be (i) permitted from time to time to change the form and combination of such posted Security provided that no Event of Default with respect to Customer then exists so long as Transmission Owner is provided timely Notice of the change, and (ii) required, if Customer has provided Security, or any portion thereof, in the form of a Guaranty, if the entity or entities providing a Guaranty no longer qualify as a Guarantor, Customer shall within ten (10) Business Days of Transmission Owner’s Notice to do so (A) replace such Guaranty with either a Guaranty from an entity or entities meeting the requirements as a Guarantor and/or (B) deliver a letter of credit or performance bond as described in Section 1.7.4.3 and/or (C) supply a cash escrow as described in Section 1.7.4.2, at Customer’s option, in any case, in the aggregate amount of the then applicable Security, less the aggregate amount of any prior draws on such Security. Upon receipt of such substitute Security, any such Guaranty shall be deemed cancelled.

1.6.4.2 If Customer elects to utilize a cash escrow as Security, it shall establish an interest-bearing escrow account with a commercial bank or other mutually acceptable escrow agent as escrow agent, and the account shall name Transmission Owner as the beneficiary for the duration of the existence of the escrow account. The escrow account shall be in United States currency, and funds in the account may be invested in a money-market fund, short-term treasury obligations, investment-grade commercial paper or other investment-grade investments with maturities of three (3) months or less. All income and interest earned on the accounts held in the escrow account shall accrue for the benefit of the Customer, and Customer may withdraw the income and interest earned at any time as long as the balance in the account after the withdrawal meets the minimum funding requirements of this Section 1.7.4.2. The escrow agreement shall require the escrow agent to notify Transmission Owner of the balance in the escrow account from time to time. The escrow agreement governing the account shall include terms that (i) prohibit

termination of the account prior to establishment of alternative Security that satisfies all the requirements of this FCA; (ii) require Notice of no less than sixty (60) Days by the escrow agent to Transmission Owner prior to any termination of the account; and (iii) allow Transmission Owner to draw the entire balance in the escrow account up to the amount of the Security if Security has not been replaced in accordance with this Agreement at least five (5) Business Days prior to the expiration or termination of the escrow account, and Transmission Owner shall hold such amounts in lieu of escrow until such time as the Security has been replaced, at which time the funds shall be returned to Customer. At the end of the Term, any balance remaining in the escrow account shall be returned or released to Customer.

1.6.4.3 In conjunction with or instead of a Guaranty or cash security as provided in Section 1.7.4.2, Customer may provide Security in the form of an irrevocable letter of credit in a commercially reasonable form and otherwise in compliance with the requirements of this Section 1.7.4 and in form and substance acceptable to the Issuer (as defined below) (the "LOC"). The LOC shall be issued by a state or federally chartered commercial bank which issues similar letters of credit in the ordinary course of its business and that (i) has an unsecured bond rating or long-term senior unsecured debt rating equivalent to A- or better as determined by at least two (2) rating agencies, one of which must be either S&P or Moody's, or, if these are not available, CAMEL ratings from the FDIC or OCC used in the banking industry no less than a 3 and (ii) has a minimum of One Hundred Million Dollars (\$100,000,000) in capital (the "Issuer"). The LOC must: (i) be issued for a minimum term of three hundred and sixty (360) Days, and, where permitted by the Issuer, shall be automatically extended for a period of one (1) year on each successive expiration date unless, at least ninety (90) Days before the current expiration date, the Issuer notifies Customer and Transmission Owner by certified mail that the Issuer has decided not to extend the letter of credit; (ii) provide that draws shall be payable upon presentation of a sight draft executed by an officer of Transmission Owner substantially in the form approved by Transmission Owner; and (iii) expressly permit partial and multiple draws. Any unused portion of the letter of credit shall be available, regardless of renewal, through the then current expiration date. Customer may replace the letter of credit with another Issuer which includes a provision for at least ninety (90) Days advance Notice to Transmission Owner and shall cause the renewal or extension of the LOC meeting the criteria set forth in this Section 1.7.4.3 within thirty (30) days prior to the expiration or cancellation of the then current LOC, and failure to do so shall authorize Transmission Owner to draw immediately upon the then current LOC. Transmission Owner shall then, at Customer's cost and with Customer's funds, place the amounts so drawn in an interest bearing escrow account in accordance with Section 1.7.4.2 above, until

and unless Customer provides a substitute form of such security meeting the requirements of this Section 1.7.4. Security in the form of an irrevocable standby letter of credit shall be governed by the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Brochure No. 500 or as otherwise required by the Issuer of the LOC.

1.6.4.4 Customer shall provide Guarantor's annual audited financial statements to Transmission Owner within one hundred twenty (120) days after the end of each calendar year. Transmission Owner shall have the right to monitor the financial condition of Customer, Guarantor, and the Issuer to the extent set forth herein, and Customer shall provide written Notice to Transmission Owner within five (5) Business Days of becoming aware that (i) the Issuer does not satisfy the requirements of the second sentence of Section 1.7.4.3, (ii) ALLETE, Inc. or an affiliate is the Guarantor, such entity does not, collectively, have a tangible net worth of at least Five Hundred Million Dollars (\$500,000,000), or (iii) if the Guarantor is not ALLETE, Inc. or an affiliate such Person does not have an Investment Grade Credit Rating, and in such event Customer shall provide alternative Security as soon as practicable that complies with this Section 1.7.4.4 and in no event later than thirty (30) Days after becoming aware of the Issuer's or a Guarantor's failure to meet the requirements of this Section 1.7.

1.6.5 Release of Security. Promptly following the termination of this FCA and the completion of all Customer's obligations under this FCA, Transmission Owner shall release the Security (including any accumulated interest, if applicable) to Customer.

1.6.6 Permitted Draws; Effects of Draws. In addition to any other remedy available to it, Transmission Owner may, before or after termination of this FCA, draw against the Security to satisfy any undisputed obligations of Customer to Transmission Owner arising under this Agreement (including, without limitation, the payment of Availability Liquidated Damages, if any, or any indemnification obligations) which Customer has not otherwise paid or performed when due, after any required Notice and opportunity to cure. If Transmission Owner draws against the Security and Customer subsequently disputes Transmission Owner's entitlement to any portion of the funds drawn, neither Transmission Owner's draw, the Issuer's payment under the LOC, nor Customer's replenishment of the Security or reimbursement of the Issuer or escrow agent shall constitute a waiver of Customer's rights to seek recovery of any amount disputed. To the extent Transmission Owner elects to draw upon the Security to satisfy obligations that otherwise constitute, or might constitute, an Event of Default by Customer and entitle Transmission Owner to terminate this Agreement, Transmission Owner's draw against the Security shall be deemed a cure of such Event of Default and shall waive Transmission Owner's right to terminate in that respect. With respect to any Event of Default by Seller that remains uncured and which could be cured

by payment of an undisputed amount to Transmission Owner, Transmission Owner shall first draw upon the Security to cure the Event of Default, and only if such Security is insufficient to cure the Event of Default shall any right of termination which Transmission Owner may otherwise have be exercised by Transmission Owner.

- 1.6.7** Reduction in Security. Transmission Owner may, by Notice from time to time to Customer, waive or reduce the amount of security required to be posted hereunder in consideration of an Affiliate of Transmission Owner having a minority ownership interest in Customer.

1.7 Permits, Licenses and Authorizations.

Transmission Owner will be responsible for all permits, licenses and authorizations.

Facilities Construction Agreement
APPENDIX B
NOTIFICATION OF COMPLETED CONSTRUCTION

This Appendix B is a part of the Facilities Construction Agreement among Customer, Transmission Owner, and Transmission Provider. Where applicable, when Transmission Owner has completed construction of the Transmission Owner Network Upgrades and/or Direct Assignment Facilities, Transmission Owner shall send notice to Customer and Transmission Provider, in substantially the form following:

[Date]

MISO

Attn: Director, Resource Utilization
720 City Center Drive
Carmel, IN 46032

Customer Address

Phone:

Fax:

Email:

Re: Completion of Network Upgrade/Direct Assignment Facilities

Dear [Name or Title]:

This letter is sent pursuant to the Facilities Construction Agreement among [Transmission Owner], [Customer], and MISO, dated _____, 20__.

On [Date], Transmission Owner completed to its satisfaction all work on the Network Upgrades and/or System Protection Facilities required to facilitate the safe and reliable operation of Customer's Facility. Transmission Owner confirms that the Network Upgrade and/or System Protection Facilities are in place.

Thank you.

[Signature]

[Transmission Owner Representative]

Facilities Construction Agreement

APPENDIX C Exhibits

This Appendix C is a part of the Facilities Construction Agreement among Customers,
Transmission Owner, and Transmission Provider.

Exhibit C1.

Transmission Owner Network Upgrade One Line

CUI//CEII MATERIAL – DO NOT RELEASE

[HIGHLY CONFIDENTIAL TRADE SECRET DATA BEGINS

CUI//CEII MATERIAL – DO NOT RELEASE

HIGHLY CONFIDENTIAL TRADE SECRET DATA ENDS]

Exhibit C2.
Estimated Cost of Transmission line and/or Substation Network Upgrades and Direct Assignment Facilities

The total estimated cost for the Network Upgrades for HVDC Converter Station, connections to AC System, Transmission Line Modifications is \$878,000,000.

The details of the cost assigned for customer with Transmission Service Requests **#90481026 & #95418167** is shown below in Table 1, Table 2, Table 3.

Detailed Cost Estimate of Facilities to be Constructed by Transmission Owner

The anticipated costs of modernizing and upgrading the HVDC converter stations are shown in Table 1. The initial estimated converter station replacement base cost was provided by the HVDC OEM. If design assumptions change significantly during the development of the project, the base cost shown in Table 1 may change.

Table 1: Converter Station Replacement Cost Breakdown

HVDC 900 MW Upgrade	Estimated Cost	Cost Assigned to Transmission Service Requests #90481026 & #95418167
Converter Station Base Cost	\$705,000,000	\$165,000,000
Internal & Professional Services	(Included)	(Included)
Contingency - Converter Station	(Included)	(Included)
AFUDC - Converter Station	(Included)	(Included)
Total (in 2022 dollars)	\$705,000,000	\$165,000,000

The anticipated costs of AC Interconnection Facilities necessary to connect the relocated VSC HVDC converter stations to the existing AC transmission system are shown in Table 2. If design assumptions change significantly during the development of the project, the base costs shown in Table 2 may change.

Table 2: AC Interconnection Facilities Cost Breakdown

HVDC 900 MW Upgrade	Estimated Cost	Cost Assigned to Transmission Service Requests #90481026 & #95418167
Minnesota AC Interconnections	\$55,000,000	\$7,000,000
North Dakota AC Interconnections	\$40,000,000	\$4,000,000
Nelson Lake 230 kV Substation	\$20,000,000	\$4,000,000
Total (in 2022dollars)	\$115,000,000	\$15,000,000

The anticipated costs of Transmission Line Modifications are shown in Table 3. The upgrade cost estimate is based on preliminary transmission structural engineering evaluations. If additional HVDC transmission line modifications or scope changes are found to be necessary during the development of the project, the costs presented in Table 3 may be impacted.

Table 3: Transmission Line Modifications Cost Breakdown

HVDC 900 MW Upgrade	Estimated Cost	Cost Assigned to Transmission Service Requests #90481026 & #95418167
HVDC T-Line 900 MW Upgrade	\$58,000,000	\$25,000,000
HVDC T-Line AFUDC	(Included)	(Included)
HVDC T-Line Contingency	(Included)	(Included)
Total (in 2022dollars)	\$58,000,000	\$25,000,000

TAB B

PUBLIC

entered into on the 28th day of February, 2024

FACILITIES CONSTRUCTION AGREEMENT

THIS FACILITIES CONSTRUCTION AGREEMENT (sometimes hereinafter referred to as “Agreement”) is made and entered into this 28th day of February, 2024, by and among the merchant function of Minnesota Power, a division of ALLETE, INC., a corporation, organized and existing under the laws 20 of the State of Minnesota (“Customer”), the **Midcontinent Independent System Operator, Inc.**, a non-profit, non-stock corporation organized and existing under the laws of the State of Delaware (“Transmission Provider”) and the transmission function of Minnesota Power, a division of ALLETE, INC., a corporation organized under the laws of the State of Minnesota (“Transmission Owner”). Customer, Transmission Owner, or Transmission Provider each may be referred to as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, Transmission Owner ~~and Customer each~~ owns electric facilities and is engaged in generation, transmission, distribution and/or sale of electric power and energy; and

WHEREAS, Transmission Provider has functional control of the operations of the Transmission System, as defined herein, and is responsible for providing transmission and interconnection service on the transmission facilities under its control; and

~~**WHEREAS**, Customer intends to own, and operate, or manage [Interconnection Customer Interconnection Facilities relating to the ____ MW generating facility] [MHVDC Connection Customer Connection Facilities relating to the ____ MW MHVDC Transmission Line] located in ____ County, ____ (“Facility”) with an expected Commercial Operation Date of ____ pursuant to the [GIA] [TCA] and will interconnect to the transmission system of ____, which system is either adjacent to or part of the Transmission System; and~~

WHEREAS, Customer intends to reserve Firm Point to Point Transmission Service via Transmission Provider’s Reservation Request Nos. 90481026 and 95418167; and

WHEREAS, the Transmission System is affected by the interconnection firm transmission service request of the Facility ~~to the ____ transmission system~~ and additions, modifications and upgrades must be made to certain existing facilities of the Transmission System to accommodate such ~~interconnection;~~ transmission service and

WHEREAS, Customer has requested, and Transmission Provider and Transmission Owner have agreed, to enter into this Agreement with Customer for the purpose of facilitating the ~~interconnection~~ transmission service of the Facility by the construction of necessary Network Upgrades to the Transmission System;

NOW, THEREFORE, in consideration of and subject to the mutual covenants contained herein, it is agreed:

ARTICLE 1 DEFINITIONS

Wherever used in this Agreement with initial capitalization, the following terms shall have the meanings specified or referred to in this Article 1. Terms used in this Agreement with initial capitalization not defined in this Article 1 shall have the meanings specified in the Tariff:

- 1.1 “Applicable Laws and Regulations” shall mean all duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority having jurisdiction over the Parties, their respective facilities and/or the respective services they provide.
- 1.2 “Applicable Reliability Council” shall mean the reliability council of NERC applicable to the Local Balancing Authority of the Transmission System to which the Facility is directly interconnected.
- 1.3 “Applicable Reliability Standards” shall mean Reliability Standards approved by the Federal Energy Regulatory Commission (FERC) under Section 215 of the Federal Power Act, as applicable.
- 1.4 “Breach” shall mean the failure of a Party to perform or observe any material term or condition of this Agreement and shall include, but not be limited to, the events described in Article 9.1.
- 1.5 “Breaching Party” shall mean a Party that is in Breach of this Agreement.
- ~~1.6 “Commercial Operation” shall mean the status of a [Generating Facility that has commenced generating electricity for sale, excluding electricity generated during Trial Operation] [MHVDC Transmission Line that has commenced transmitting electricity for sale, excluding electricity transmitted during Trial Operation].~~
- ~~1.7 “Commercial Operation Date” or “COD” of a Facility shall mean the date on which the Facility commences Commercial Operation pursuant to [Appendix E to the Generator Interconnection Agreement] [Appendix C to the Transmission Connection Agreement].~~
- ~~1.8~~1.6 “Confidential Information” shall mean any proprietary or commercially or competitively sensitive information, trade secret or information regarding a plan, specification, pattern, procedure, design, device, list, concept, policy or compilation relating to the present or planned business of a Party, or any other information as specified in Article 12, which is designated as confidential by the Party supplying the information, whether conveyed orally, electronically, in writing, through inspection, or otherwise, that is received by another Party.

1.97 “Customer” shall mean, for purposes of this Agreement, ~~an Interconnection~~
Transmission Customer as defined in the ~~GIP set forth in Attachment X or an MHVDC~~
~~Connection Customer as defined in the MHCP set forth in Attachment GGG~~ Tariff.

1.108 “Default” shall mean the failure of a Breaching Party to cure its Breach in accordance with Article 9 of this Agreement.

~~1.11~~**1.9** “Direct Assignment Facilities” shall mean those facilities or portions of facilities that are constructed by any Transmission Owner(s), ITC, or ITC Participant(s) for the sole use/benefit of a particular Transmission Customer requesting service under this Tariff. Direct Assignment Facilities shall be specified in the Service Agreement that governs service to the Transmission Customer and shall be subject to Commission approval.

1.10 “Effective Date” shall mean the date on which this Agreement becomes effective upon execution by the Parties subject to acceptance by the Commission, or if filed unexecuted, upon the date specified by the Commission.

~~1.12~~**1.1** “FERC” shall mean the Federal Energy Regulatory Commission, also known as Commission, or its successor.

~~1.13~~**1.2** “Force Majeure” shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party’s control. A Force Majeure event does not include an act of negligence or intentional wrongdoing by the Party claiming Force Majeure.

~~1.14~~ “Generator Interconnection Procedures or “GIP” shall mean the interconnection procedures that are included in the Transmission Provider Tariff.

~~1.15~~**1.13** “Good Utility Practice” shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known to the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

~~1.16~~**1.4** “Governmental Authority” shall mean any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive,

police, or taxing authority or power; provided, however, that such term does not include Customer, Transmission Provider, Transmission Owner, or any Affiliate thereof.

1.17¹⁵ “In-Service Date” shall mean the date upon which Customer reasonably expects it will be ready to begin use of the Network Upgrades and/or ~~System Protection~~ Direct Assignment Facilities.

~~**1.18** “Interconnection Agreement” or “GIA” shall mean that Generator Interconnection Agreement by and between Transmission Provider, _____ and Interconnection Customer and reported in MISO’s Electronic Quarterly Reports.~~

1.16

~~**1.19**~~ **1.16** “Local Balancing Authority” shall mean an operational entity or a Joint Registration Organization which is (i) responsible for compliance with the subset of NERC Balancing Authority Reliability Standards defined in the Balancing Authority Agreement for their local area within the MISO Balancing Authority Area, (ii) a Party to Balancing Authority Agreement, excluding MISO, and (iii) shown in Appendix A to the Balancing Authority Agreement.

1.20¹⁷ “Loss” shall mean any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party’s performance, or non-performance of its obligations under this Agreement on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing, by the indemnified Party.

1.18 “Material Modification” shall mean: (1) modification to a Transmission Service Request in the queue that has a material adverse impact on the cost or timing or constraint identification of Transmission Service Request; or (2) planned modification to proposed network upgrades that is undergoing evaluation and has a material adverse impact on the Transmission System prior to the modification.

~~**1.19**~~~~**1.21**~~ **1.19** “NERC” shall mean the North American Electric Reliability Corporation, or its successor organization.

1.22²⁰ “Network Upgrades” shall mean the additions, modifications, and upgrades to the Transmission System required ~~at or beyond the point at which the [Interconnection Facilities] [Connection Facilities] connect to the Transmission System or Distribution System, as applicable, to accommodate the interconnection of the Facility to the Transmission System~~ to accommodate the transmission service requests.

1.23² “Non-Breaching Party” shall mean a Party that is not in Breach of this Agreement with regard to a specific event of Breach by another Party.

1.24²² “Reasonable Efforts” shall mean, with respect to an action required to be attempted or taken by a Party under this Agreement, efforts that are timely and consistent with Good

Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.

~~1.25 “Shared Network Upgrade” shall mean a Network Upgrade or Common Use Upgrade that is funded by a Customer(s), including when the Transmission Owner elects to fund the capital cost of such a Network Upgrade or Common Use Upgrade under Section 11.3 of the GIA, and also benefits other Customer(s) that are later identified as beneficiaries.~~

~~1.26 “System Protection Facilities” shall mean the equipment, including necessary protection signal communications equipment, required to protect (1) the Transmission System or other delivery systems or other generating systems from faults or other electrical disturbances occurring at the Facility and (2) the Facility from faults or other electrical system disturbances occurring on the Transmission System or on other delivery systems or other generating systems to which the Transmission System is directly connected.~~

1.27

1.23 “Tariff” shall mean the Transmission Provider’s Tariff through which open access transmission service and Interconnection Service are offered, as filed with the Commission, and as amended or supplemented from time to time, or any successor tariff.

~~1.28~~1.24 “Transmission Service” shall mean Point-to-Point Transmission Service provided under Module B of the Tariff on a firm and non-firm basis and the Network Integration Transmission Service under Module B of the Tariff.

1.25 “Transmission System” shall mean the facilities owned by Transmission Owner and controlled or operated by Transmission Provider or Transmission Owner that are used to provide Transmission Service or Wholesale Distribution Service under the Tariff.

ARTICLE 2 TERM OF AGREEMENT

2.1 Effective Date. Subject to required regulatory authorizations, including, without limitation, acceptance by FERC under Section 205 of the Federal Power Act, this Agreement shall become effective on the date on which this Agreement is made and entered into by the Parties.

2.2 Term.

2.2.1 General. This Agreement shall become effective as provided in Article 2.1 and shall continue in full force and effect until the earlier of (i) the final repayment, where applicable, by Transmission Owner of the amount funded by Customer for Transmission Owner’s design, procurement, construction and installation of the Network Upgrades and ~~System Protection~~Direct Assignment Facilities provided in Appendix A; (ii) the Parties agree to mutually terminate this Agreement; (iii) earlier termination is permitted or provided for under Appendix A of this Agreement; or (iv) Customer terminates this Agreement after providing

Transmission Provider and Transmission Owner with written notice at least sixty (60) Calendar Days prior to the proposed termination date, provided that Customer has no outstanding contractual obligations to Transmission Provider or Transmission Owner under this Agreement. No termination of this Agreement shall be effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination. The term of this Agreement may be adjusted upon mutual agreement of the Parties, if the ~~Commercial Operation Date for the Facility or the~~ In-Service Date for the Network Upgrades and ~~System Protection~~ Direct Assignment Facilities is adjusted in accordance with the rules and procedures established by Transmission Provider.

2.2.2 Termination Upon Default. In the event of a Default by a Party, the Non-Breaching Party or Parties shall have the termination rights described in Articles 9 and 10; provided, however, if an event described in part (c) of Article 9.1 has not occurred, and provided the Default does not pose a threat to the reliability of the Transmission System, neither Transmission Provider nor Transmission Owner may terminate this Agreement if Customer is the Breaching Party and Customer (i) has undertaken, in accordance with Article 9.2, to cure the Breach that led to the Default and has failed to cure the Breach for reasons other than Customer's failure to diligently commence reasonable and appropriate steps to cure the Breach within the thirty (30) Calendar Days allowed by Article 9.2, and (ii) compensates Transmission Provider or Transmission Owner within thirty (30) Calendar Days for the amount of damage billed to Customer by Transmission Provider or Transmission Owner for any damages, including costs and expenses, incurred by Transmission Provider or Transmission Owner as a result of such Default. In the event of an occurrence described in part (c) of Article 9.1, and providing the Default does not pose a threat to the reliability of the Transmission System, the Non-Breaching Party or Parties shall not terminate this Agreement provided that the Breaching Party provided an assurance of payment acceptable to the Non-Breaching Party, and pays any applicable damages.

2.2.3 Consequences of Termination. In the event of a termination by any Party, other than a termination by Customer due to a Breach by Transmission Owner, Customer must pay Transmission Owner all amounts still due and payable for construction and installation of the Network Upgrades and ~~System Protection~~ Direct Assignment Facilities (including, without limitation, any equipment ordered related to such construction), plus all out-of-pocket expenses incurred by Transmission Owner in connection with the construction and installation of the Network Upgrades and ~~System Protection~~ Direct Assignment Facilities, through the date of termination, plus any actual costs which Transmission Owner (A) reasonably incurs in winding up work and construction demobilization and (B) reasonably incurs to ensure the safety of persons and property and the integrity and safe and reliable operation of the Transmission System. Transmission Owner agrees to use Reasonable Efforts to minimize such costs.

~~Customer is responsible for the financial impact that is caused to another Interconnection Customer as a result of the termination of this Agreement, Customer's GIA, or any of Customer's other FCA(s) or MPFCA(s); financial impact as defined by Section 7.8 of Attachment X. To the extent that the Customer has already paid Transmission Owner for any or all such costs of materials or equipment not taken by Customer or upgrades not yet constructed, Transmission Owner shall promptly transfer such remaining amounts to Transmission Provider, less any costs, including penalties incurred by Transmission Owner to cancel any pending orders of or return such materials, equipment, or contracts. Transmission Provider will perform a financial impact analysis in accordance with Section 7.8 of Attachment X to determine the amount that should be refunded to Interconnection Customer. Transmission Provider shall refund such remaining amounts to Interconnection Customer, less any financial impact caused by the termination of this Agreement or Interconnection Customer's GIA, MPFCA(s), or other FCA(s), as determined through the analysis performed in accordance with Section 7.8 of Attachment X. If Interconnection Customer made its payment(s) through a letter of credit, surety bond, or parental guarantee, Transmission Owner will draw against that letter of credit, surety bond, or parental guarantee in an amount determined through the analysis performed in accordance with Section 7.8 of Attachment X and transfer that amount to Transmission Provider, unless Interconnection Customer funds the financial impact through another means.~~

2.2.4 Material Adverse Change. In the event of a material change in law or regulation that adversely affects, or may reasonably be expected to adversely affect a Party's rights and/or obligations under this Agreement, the Parties shall negotiate in good faith any amendments to this Agreement necessary to adapt the terms of this Agreement to such change in law or regulation, and Transmission Provider shall file such amendments with FERC. If, within sixty (60) Calendar Days after the occurrence of any event described in this Article 2.2.4, the Parties are unable to reach agreement as to any necessary amendments, the Parties may proceed under Article 14 to resolve any disputes related thereto; Transmission Provider and/or Transmission Owner shall have the right to make a unilateral filing with FERC to modify this Agreement pursuant to Section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder, and Customer shall have the right to make a unilateral filing with FERC to modify this Agreement pursuant to Section 206 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder; provided that a Party shall have the right to protest any such filing by another Party and to participate fully in any proceeding before FERC in which such modifications may be considered. If a Party is unable to fully perform this Agreement due to the occurrence of an event described in this Article 2.2.4 and such inability is not based on economic reasons, such Party shall not be deemed to be in Default of its obligations under this Agreement, provided that such Party is seeking dispute resolution under Article 14 or before FERC, to the extent that (i) such Party is unable to perform as a result of such an event and (ii) such Party acts in accordance with its obligations under this Article 2.2.4.

- 2.3 Regulatory Filing.** In accordance with Applicable Laws and Regulations, Transmission Provider shall file this Agreement, and any amendment to this Agreement with FERC as a service agreement under the Tariff. If Customer has executed this Agreement or any amendment to this Agreement, Customer shall not protest this Agreement or the amendment, shall reasonably cooperate with Transmission Provider with respect to such filing and shall provide any information, including the rendering of testimony or pleadings, as applicable, reasonably requested by Transmission Provider to the extent reasonably needed to comply with applicable regulatory requirements.
- 2.4 Survival.** The applicable provisions of this Agreement shall continue in effect after expiration, cancellation, or termination hereof to the extent necessary to provide for final billings, billing adjustments, and the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect.
- 2.5 Termination Obligations.** Upon any termination pursuant to this Agreement, Customer shall be responsible for the payment of all costs or other contractual obligations incurred prior to the termination date including previously incurred capital costs, penalties for early termination, costs of removal and site restoration.

ARTICLE 3

CONSTRUCTION OF NETWORK UPGRADES AND ~~SYSTEM PROTECTION~~DIRECT ASSIGNMENT FACILITIES

3.1 Construction.

3.1.1 Transmission Owner Obligations. Transmission Owner shall (or shall cause such action to) design, procure, construct and install, and Customer shall pay, consistent with Article 3.2, the cost of, all Network Upgrades and ~~System Protection~~Direct Assignment Facilities identified in Appendix A. All Network Upgrades and ~~System Protection~~Direct Assignment Facilities designed, procured, constructed and installed by Transmission Owner pursuant to this Agreement shall satisfy all requirements of applicable safety and/or engineering codes, including those requirements of Transmission Owner and Transmission Provider, and comply with Good Utility Practice, and further, shall satisfy all Applicable Laws and Regulations.

3.1.2 Suspension of Work.

3.1.2.1 Right to Suspend for Force Majeure Event. Provided that such suspension is permissible under the authorizations, permits or approvals granted for the construction of the Network Upgrades and ~~System Protection~~Direct Assignment Facilities Customer will not suspend unless a Force Majeure event occurs. Customer must provide written notice of its

request for suspension to Transmission Provider and Transmission Owner, and provide a description of the Force Majeure event that is acceptable to Transmission Provider. Suspension will only apply to Customer milestones and ~~[Interconnection Facilities]~~~~[Connection Facilities]~~ described in the Appendices of this Agreement. Prior to suspension, Customer must also provide security acceptable to Transmission Owner, equivalent to the higher of \$5 million or the total cost of all Network Upgrades, Transmission Owner's ~~System Protection~~Direct Assignment Facilities, and Distribution Upgrades listed in Appendix A of this Agreement. Network Upgrades, ~~System Protection~~Direct Assignment Facilities ~~, and Transmission Owner [Interconnection Facilities]~~ ~~[Connection Facilities]~~ will be constructed on the schedule described in the Appendices of this Agreement unless: (1) construction is prevented by the order of a Governmental Authority; (2) the Network Upgrades and ~~System Protection~~Direct Assignment Facilities are not needed by any other project; or (3) Transmission Owner or Transmission Provider determines that a Force Majeure event prevents construction. In the event of (1), (2), or (3) security shall be released upon the determination that the Network Upgrades and ~~System Protection~~Direct Assignment Facilities will no longer be constructed. If suspension occurs, Customer shall be responsible for the costs which Transmission Owner incurs (i) in accordance with this Agreement prior to the suspension, (ii) in suspending such work, including any costs incurred to perform such work as may be necessary to ensure the safety of persons and property and the integrity of the Transmission System and, if applicable, any costs incurred in connection with the cancellation of contracts and orders for material which Transmission Owner cannot reasonably avoid, and (iii) reasonably incurs in winding up work and construction demobilization; provided, however, that, prior to canceling any such contracts or orders, Transmission Owner shall obtain Customer's authorization. Customer shall be responsible for all costs incurred in connection with Customer's denial of authorization to cancel such contracts or orders. Interest as provided in

Article 3.2.2.2 on amounts paid by Customer to Transmission Owner for the design, procurement, construction and installation of the Network Upgrades and ~~System Protection~~Direct Assignment Facilities, shall not accrue during periods in which Customer has suspended construction under this Article 3.1.2. Transmission Owner shall invoice Customer pursuant to Article 6 and use Reasonable Efforts to minimize its costs. In the event that Customer suspends work pursuant to this Article, no construction duration, timelines and schedules set forth in Appendix A shall be suspended during the period of suspension unless ordered by a Governmental Authority, with such order being the Force Majeure event causing the suspension.

3.1.2.2 Recommencing of Work. If Customer requests Transmission Owner to recommence such work, Transmission Owner shall have no obligation to afford such work the priority it would have had but for the prior actions of Customer to suspend the work. In such event, Customer shall be responsible for any costs incurred in recommencing the work. All recommenced work shall be completed pursuant to an amended schedule for the ~~interconnection~~ transmission service as agreed to by the Parties. Transmission Provider and Transmission Owner have the right to request ~~an Interconnection~~ a System Impact Study if conditions have materially changed subsequent to the request to suspend. Customer shall be responsible for the costs of any studies required.

3.1.2.3 Termination in the Event of a Material Modification. In the event Customer suspends the performance of work by Transmission Owner pursuant to this Article 3.1.2 and modifies its ~~Commercial Operation Date by three (3) years or more~~ In-Service Date, this Agreement shall be deemed terminated unless Customer demonstrates that the change is not a Material Modification under FERC precedent.

3.1.2.4 Right to Suspend Due to Default. Transmission Owner reserves the right, upon written notice to Customer, to suspend, at any time, work by Transmission Owner and the incurrence of additional expenses associated with the construction and installation of the Network Upgrades and ~~System Protection~~ Direct Assignment Facilities upon the occurrence of either a Breach that Customer is unable to cure pursuant to Article 9 or an Event of Default pursuant to Article 9. Any form of suspension by Transmission Owner shall not be barred by Articles 2.2.2, 2.2.3 or 9.2.2, nor shall it affect Transmission Owner's right to terminate the work or this Agreement pursuant to Article 10. In such events, Customer shall be responsible for costs which Transmission Owner incurs as set forth in Article 2.2.3.

3.1.3 Construction Status. Transmission Owner shall keep Customer and Transmission Provider advised periodically as to the progress of its respective design, procurement and construction efforts as described in Appendix A. Customer may, at any time, request a progress report from Transmission Owner, with a copy to be provided to Transmission Provider. If, at any time, Customer determines that the completion of the Network Upgrades and ~~System Protection~~ Direct Assignment Facilities will not be required until after the specified In-Service Date, Customer will provide written notice to Transmission Owner and Transmission Provider of such later date upon which the completion of the Network Upgrades and ~~System Protection~~ Direct Assignment Facilities would be required. Transmission Owner may delay the In-Service Date of the Network Upgrades accordingly.

3.1.4 Timely Completion. Transmission Owner shall use Reasonable Efforts to design, procure, construct, install, and test the Network Upgrades and ~~System Protection~~ Direct Assignment Facilities in accordance with the schedule set forth in Appendix A, which schedule may be revised from time to time by mutual agreement of the Parties. If any event occurs that will affect the time for completion of the Network Upgrades and ~~System Protection~~ Direct Assignment Facilities, or the ability to complete any of them, Transmission Owner and/or Transmission Provider shall promptly notify Customer, with a copy to the other Party. In such circumstances, Transmission Provider shall, within fifteen (15) Calendar Days of such notice, convene a technical meeting with Customer and Transmission Owner to evaluate the alternatives available to Customer. Transmission Owner and/or Transmission Provider shall also make available to Customer all studies and work papers related to the event and corresponding delay, including all information that is in the possession of Transmission Provider or Transmission Owner that is reasonably needed by Customer to evaluate alternatives. Transmission Owner shall, at Customer's request and expense, use Reasonable Efforts to accelerate its work under this Agreement to meet the schedule set forth in Appendix A, provided that Customer authorizes such actions and the costs associated therewith in advance.

3.2 ~~Interconnection~~ Network Upgrade Costs and Credits.

3.2.1 Costs. Customer shall pay to Transmission Owner costs (including taxes and financing costs) associated with seeking and obtaining all necessary approvals and of designing, engineering, constructing, and testing the Network Upgrades and ~~System Protection~~ Direct Assignment Facilities, as identified in Appendix A, in accordance with the cost recovery method provided herein. ~~As required by Section 7.3.2.1 and 7.3.3.1 of Attachment X, Transmission Owner shall have provided Transmission Provider with written notice if Transmission Owner elects to fund the capital for the Network Upgrades and Transmission Owner's System Protection Facilities; otherwise, such facilities, if any, shall be solely funded by Customer.~~

Customer shall pay for Direct Assignment Facilities and Network Upgrades in accordance with Attachment N of the Tariff. The cost assignment provisions shall apply to facilities constructed by Transmission Owner until such time as Transmission Owner is able to fully recover its revenue requirements as calculated in Attachment N, Section C. If the Transmission Service Request is discontinued or suspended, the Transmission Customer shall pay the Transmission Owner for the remaining applicable amounts that must be paid pursuant to Attachment N of the Tariff.

Transmission Owner shall install, at Customer's expense, any Transmission Owner's ~~System Protection~~ Direct Assignment Facilities that may be required on the Transmission Owner's ~~[Interconnection Facilities]~~ [Connection Facilities] or the Transmission Owner's transmission or distribution facilities as a result of the

~~interconnection of the Facility and the~~ Network Upgrades required by Customer's ~~[Interconnection Facilities] [Connection Facilities]~~ request.

~~In the event the Network Upgrade(s) are determined to be Shared Network Upgrade(s), Transmission Owner and Transmission Provider shall not be responsible for funding obligations related to the Shared Network Upgrade(s) under separate GIAs and/or TCAs. Transmission Provider shall only be responsible to reimburse those funds to Customer that Transmission Provider receives pursuant to separate GIAs and/or TCAs.~~

3.2.1.1 Lands of Other Property Owners. If any part of the Transmission Owner's ~~[Interconnection Facilities] [Connection Facilities]~~, Network Upgrades, ~~System Protection~~ Direct Assignment Facilities, and/or Distribution Upgrades is to be installed on property owned by persons other than Customer or Transmission Owner, Transmission Owner shall at Customer's expense use efforts, similar in nature and extent to those that it typically undertakes on its own behalf or on behalf of its Affiliates, including use of its eminent domain authority to the extent permitted and consistent with Applicable Laws and Regulations and, to the extent consistent with such Applicable Laws and Regulations, to procure from such persons any rights of use, licenses, rights of way and easements that are necessary to construct, operate, maintain, test, inspect, replace or remove the Transmission Owner's ~~[Interconnection Facilities] [Connection Facilities]~~, Network Upgrades, ~~System Protection~~ Direct Assignment Facilities, and/or Distribution Upgrades upon such property.

3.2.2 Credits.

3.2.2.1 Repayment. Customer shall be entitled to a cash repayment by Transmission Owner(s) that owns the Network Upgrades, of the amount paid respectively to Transmission Owner, if any, for the Network Upgrades, as provided under ~~Attachment FF of~~ the Tariff, and including any tax gross-up or other tax-related payments associated with the repayable portion of the Network Upgrades, and not repaid to Customer pursuant to Article 3.3.1 or otherwise, to be paid to Customer on a dollar-for-dollar basis for the non-usage sensitive portion of transmission charges, as payments are made under the Tariff for Transmission Service with respect to the Facility. Any repayment shall include interest calculated in accordance with the methodology set forth in FERC's regulations at 18 C.F.R. § 35.19 a(a)(2)(iii) from the date of any payment for Network Upgrades through the date on which Customer receives a repayment of such payment pursuant to this subparagraph. Interest shall not accrue during periods in which Customer has suspended construction pursuant to Article 3.1.2.1 or the Network Upgrades have been determined not to be needed pursuant to this Article 3.2.2.1. Customer may assign such repayment rights to any person.

~~If the Facility is designated a Network Resource under the Tariff, or if there are otherwise no incremental payments for Transmission Service resulting from the use of the Facility by Transmission Customer, and in the absence of another mutually agreeable payment schedule any repayments provided under Attachment FF shall be established equal to the applicable rate for Firm Point To Point Transmission Service for the pricing zone where the Network Load is located multiplied by the portion of the demonstrated output of the Facility designated as a Network Resource by the Network Customer(s) or in the absence of such designation, equal to the monthly firm single system wide rate defined under Schedule 7 of the Tariff multiplied by the portion of the demonstrated output of the Facility under contract to Network Customer(s) and consistent with studies pursuant to Section 3.2.2.2 of the GIP.~~

3.2.2.2 Amount. Transmission credits will be based on the final, actual cost of completing the Network Upgrades as provided by the final invoice prepared by Transmission Owner pursuant to Article 6.4 of this Agreement. Any repayment made pursuant to Article 3.2.2.1 shall include (i) the final, actual cost after any true-up amounts have been paid pursuant to Article 6.4, and (ii) interest calculated in accordance with the methodology set forth in FERC's regulations at 18 C.F.R. §35.19a(a)(2)(iii) from the date of any payment for Network Upgrades through the date on which Customer receives a repayment of such payment pursuant to this Article 3.2 until fully reimbursed. Interest shall not accrue during periods in which Customer has suspended construction pursuant to Article 3.1.2.1.

3.2.2.3 Alternative Payment Schedule. Notwithstanding the foregoing, as applicable and consistent with the ~~provisions of Attachment FF of the~~ Tariff, Customer, Transmission Provider, and Transmission Owner, may adopt any alternative payment schedule that is mutually agreeable ~~so long as Transmission Owner takes one of the following actions no later than five (5) years from the Commercial Operation Date: (1) Return to Customer any amounts advanced for Network Upgrades not previously repaid, or (2) declare in writing that Transmission Owner will continue to provide payments to Customer on a dollar for dollar basis for the non-usage sensitive portion of transmission charges, or develop an alternative schedule that is mutually agreeable and provides for the return of all amounts advanced for Network Upgrades not previously repaid; however, full reimbursement shall not extend beyond twenty (20) years from the Commercial Operation Date.~~

3.2.2.4 Impact of Failure to Achieve Commercial Operation. ~~If the Facility fails to achieve Commercial Operation, but it or another generating~~

~~facility is later constructed and makes use of the Network Upgrades, Transmission Owner shall at that time reimburse Customer for the remaining applicable amounts that may be refundable pursuant to Attachment FF of the Tariff, that were advanced for the Network Upgrades on their respective systems as described above. Before any such reimbursement can occur, Customer, or the entity that ultimately constructs the Facility, if different, is responsible for identifying the entity to which the reimbursement must be made.~~ 3.2.2.4

RESERVED

3.2.2.5 Rights not Relinquished. Notwithstanding any other provision of this Agreement, nothing herein shall be construed as relinquishing or foreclosing any rights, including but not limited to firm transmission rights, capacity rights, transmission congestion rights, or transmission credits, that Customer, shall be entitled to, now or in the future under any other agreement or tariff as a result of, or otherwise associated with, the transmission capacity, if any, created by the Network Upgrades, including the right to obtain refunds or transmission credits for Transmission Service that is not associated with the Facility.

3.3 Taxes.

3.3.1 Indemnification for Contributions in Aid of Construction. The Parties intend that all payments made by Customer to Transmission Owner for the installation of the Network Upgrades and ~~System Protection~~ Direct Assignment Facilities shall be non-taxable contributions to capital in accordance with the Internal Revenue Code and any applicable state tax laws and shall not be taxable as contributions in aid of construction under the Internal Revenue Code and any applicable state tax laws. With regard only to such contributions, Transmission Owner shall not include a gross-up for income taxes in the amounts it charges Customer for the installation of the Network Upgrades and ~~System Protection~~ Direct Assignment Facilities unless (i) Transmission Owner has determined, in good faith, that the payments or property transfers made by Customer to Transmission Owner should be reported as income subject to taxation or (ii) any Governmental Authority directs Transmission Owner to report payments or property as income subject to taxation; provided, however, that Transmission Owner may require Customer to provide security for ~~[Interconnection Facilities]~~ ~~[Connection Facilities]~~ Network Upgrades, in a form reasonably acceptable to Transmission Owner (such as a parental guarantee or a letter of credit), in an amount equal to the cost consequences or any current tax liability under this Article. Customer shall reimburse Transmission Owner for such costs on a fully grossed-up basis, in accordance with this Article, within thirty (30) Calendar Days of receiving written notification from Transmission Owner of the amount due, including detail about how the amount was calculated.

The indemnification obligation shall terminate at the earlier of (1) the expiration of the ten-year testing period and the applicable statute of limitation, as it may be extended by Transmission Owner upon request of the IRS, to keep these years open for audit or adjustment, or (2) the occurrence of a subsequent taxable event and the payment of any related indemnification obligations as contemplated by this Article. Notwithstanding the foregoing provisions of this Article 3.3.1, and to the extent permitted by law, to the extent that the receipt of such payments by Transmission Owner is determined by any Governmental Authority to constitute income by Transmission Owner subject to taxation, Customer shall protect, indemnify and hold harmless Transmission Owner and its Affiliates, from all claims by any such Governmental Authority for any tax, interest and/or penalties associated with such determination. Upon receiving written notification of such determination from the Governmental Authority, Transmission Owner shall provide Customer with written notification within thirty (30) Calendar Days of such determination and notification. Transmission Owner, upon the timely written request by Customer and at Customer's expense, shall appeal, protest, seek abatement of, or otherwise oppose such determination. Transmission Owner reserves the right to make all decisions with regard to the prosecution of such appeal, protest, abatement or other contest, including the compromise or settlement of the claim; provided that Transmission Owner shall cooperate and consult in good faith with Customer regarding the conduct of such contest. Customer shall advance to Transmission Owner on a periodic basis as requested by Transmission Owner the estimated cost of prosecuting such appeal, protest, abatement or other contest. Customer shall not be required to pay Transmission Owner for the tax, interest and/or penalties prior to the seventh (7th) Calendar Day before the date on which Transmission Owner (i) is required to pay the tax, interest and/or penalties or other amount in lieu thereof pursuant to a compromise or settlement of the appeal, protest, abatement or other contest; (ii) is required to pay the tax, interest and/or penalties as the result of a final, non-appealable order by a Governmental Authority; or (iii) is required to pay the tax, interest and/or penalties as a prerequisite to an appeal, protest, abatement or other contest. In the event such appeal, protest, abatement or other contest results in a determination that Transmission Owner is not liable for any portion of any tax, interest and/or penalties for which Customer has already made payment to Transmission Owner, Transmission Owner shall promptly refund to Customer any payment attributable to the amount determined to be non-taxable, plus any interest or other payments Transmission Owner receives or which Transmission Owner may be entitled with respect to such payment. In accordance with Article 6, Customer shall provide Transmission Owner with credit assurances sufficient to meet Customer's estimated liability for reimbursement of Transmission Owner for taxes, interest and/or penalties under this Section 3.3.1. Such estimated liability shall be stated in Appendix A.

To the extent that Transmission Owner is a limited liability company and not a corporation, and has elected to be taxed as a partnership, then the following shall apply: Transmission Owner represents, and the Parties acknowledge, that

Transmission Owner is a limited liability company and is treated as a partnership for federal income tax purposes. Any payment made by Customer to Transmission Owner for Network Upgrades and ~~System Protection~~ Direct Assignment Facilities is to be treated as an upfront payment in accordance with Rev Proc 2005-35. It is anticipated by the Parties that any amounts paid by Customer to Transmission Owner for Network Upgrades and ~~System Protection~~ Direct Assignment Facilities will be reimbursed to Customer in accordance with the terms of this Agreement, provided Customer fulfills its obligations under this Agreement.

3.3.2 Private Letter Ruling. At Customer's request and expense, Transmission Owner shall file with the IRS a request for a private letter ruling as to whether any property transferred or sums paid, or to be paid, by Customer to Transmission Owner under this Agreement are subject to federal income taxation. Customer will prepare the initial draft of the request for a private letter ruling, and will certify under penalties of perjury that all facts represented in such request are true and accurate to the best of Customer's knowledge. Transmission Owner and Customer shall cooperate in good faith with respect to the submission of such request.

3.3.3 Other Taxes. Upon the timely request by Customer, and at Customer's sole expense, Transmission Owner shall appeal, protest, seek abatement of, or otherwise contest any tax (other than federal or state income tax) asserted or assessed against Transmission Owner for which Customer may be required to reimburse Transmission Owner under the terms of this Agreement. Customer shall pay to Transmission Owner on a periodic basis, as invoiced by Transmission Owner, Transmission Owner's documented reasonable costs of prosecuting such appeal, protest, abatement, or other contest. Customer and Transmission Owner shall cooperate in good faith with respect to any such contest. Unless the payment of such taxes is a prerequisite to an appeal or abatement or cannot be deferred, no amount shall be payable by Customer to Transmission Owner for such taxes until they are assessed by a final, non-appealable order by any court or agency of competent jurisdiction. In the event that a tax payment is withheld and ultimately due and payable after appeal, Customer will be responsible for all taxes, interest and penalties, other than penalties attributable to any delay caused by Transmission Owner. Each Party shall cooperate with the other Parties to maintain each Party's tax status. Nothing in this Agreement is intended to adversely affect any Party's tax-exempt status with respect to the issuance of bonds including, but not limited to, Local Furnishing Bonds.

ARTICLE 4 FORCE MAJEURE

4.1 Notice. The Party unable to carry out an obligation imposed on it by this Agreement due to a Force Majeure event shall notify the other Parties in writing or verbally with

subsequent notice in writing within a reasonable time after the occurrence of the cause relied on.

- 4.2 Duration of Force Majeure.** Except as set forth in Article 4.3, no Party will be considered in Default as to any obligation under this Agreement if prevented from fulfilling the obligation due to an event of Force Majeure. A Party shall not be responsible for any non-performance or be considered in Breach or Default under this Agreement due to Force Majeure. A Party shall be excused from whatever performance is affected for only the duration of the Force Majeure event and while the Party exercises Reasonable Efforts to alleviate such situation. As soon as the non-performing Party is able to resume performance of its obligations excused as a result of the occurrence of Force Majeure, such Party shall give prompt notice thereof to the other Parties.
- 4.3 Obligation to Make Payments.** Any Party's obligation to make payments for services incurred shall not be suspended by Force Majeure.

ARTICLE 5 INFORMATION REPORTING

- 5.1 Information Reporting Obligations.** Each Party shall, in accordance with Good Utility Practice, promptly provide to the other Parties all relevant information, documents, or data regarding the Party's facilities and equipment which may reasonably be expected to pertain to the reliability of the other Party's facilities and equipment and which has been reasonably requested by the other Party.
- 5.2 Non-Force Majeure Reporting.** A Party shall notify the other Parties when it becomes aware of its inability to comply with the provisions of this Agreement for a reason other than Force Majeure. The Parties agree to cooperate with each other and provide necessary information regarding such inability to comply, including, but not limited to, the date, duration, reason for the inability to comply, and corrective actions taken or planned to be taken with respect to such inability to comply. In the event of Force Majeure, a Party unable to comply with the provisions of this Agreement shall notify the other Parties in accordance with the provisions of Article 4.

ARTICLE 6 CREDITWORTHINESS, BILLING AND PAYMENTS

- 6.1 Creditworthiness.** By the earlier of (i) thirty (30) Calendar Days prior to the due date for Customer's first payment under the payment schedule specified in Appendix A or (ii) the first date specified in Appendix A for the ordering of equipment by Transmission Owner for installing the Network Upgrades and ~~System Protection~~ [Direct Assignment](#) Facilities, Customer shall provide Transmission Owner, at Transmission Owner's option, with a form of adequate assurance of creditworthiness reasonably acceptable to Transmission Owner. If the adequate assurance is a parental guarantee or surety bond, it must be made by an entity that meets the creditworthiness requirements of Transmission Owner, have terms and conditions reasonably acceptable to Transmission Owner and

guarantee payment of the amount specified in the next paragraph of this Article 6.1. If the adequate assurance is a letter of credit, it must be issued by a bank reasonably acceptable to Transmission Owner, specify a reasonable expiration date and may provide that the maximum amount available to be drawn under the letter shall reduce on a monthly basis in accordance with the monthly payment schedule. The surety bond must be issued by an insurer reasonably acceptable to Transmission Owner, specify a reasonable expiration date and may provide that the maximum amount assured under the bond shall reduce on a monthly basis in accordance with the monthly payment schedule. After the Network Upgrades and ~~System Protection~~ Direct Assignment Facilities have been placed in service and until Customer fully compensates Transmission Owner for construction of the Network Upgrades and ~~System Protection~~ Direct Assignment Facilities, Customer shall, subject to the standards of this Article 6.1, maintain a parental guarantee, surety bond, letter of credit, or some other credit assurance sufficient to meet its monthly payment obligation under Article 3.2.1, as specified in the following paragraph. Customer's estimated liability under Article 3.2.1 is stated in Appendix A.

Customer shall maintain as of the first day of each month beginning on the due date for Customer's first payment under the payment schedule specified in Appendix A, and continuing through to the ~~Commercial Operation~~ In-Service Date, a parental guarantee, surety bond or letter of credit in an amount sufficient to cover the applicable costs and cost commitments required of the Party responsible for building the facilities pursuant to the construction schedule developed in this Agreement for designing, engineering, seeking regulatory approval from any Governmental Authority, constructing, procuring and installing the facilities and shall be reduced on a dollar-for-dollar basis for payments made to Transmission Owner for these purposes as defined and established under Appendix A.

- 6.2 Invoice.** Each Party shall submit to the other Party, on a monthly basis, invoices of amounts due, if any, for the preceding month. Each invoice shall state the month to which the invoice applies and fully describe the services and equipment provided. The Parties may discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts a Party owes to the other Party under this Agreement, including interest payments or credits, shall be netted so that only the net amount remaining due shall be paid by the owing Party.
- 6.3 Payment.** Invoices shall be rendered to the paying Party at the address specified by the Parties. The Party receiving the invoice shall pay the invoice within thirty (30) Calendar Days of receipt. All payments shall be made in immediately available funds payable to the other Party, or by wire transfer to a bank named and account designated by the invoicing Party. Payment of invoices by a Party will not constitute a waiver of any rights or claims that Party may have under this Agreement.
- 6.4 Final Invoice.** Within six (6) months after completion of the construction of the Network Upgrades and ~~System Protection~~ Direct Assignment Facilities, Transmission Owner shall provide an invoice of the final cost of the construction of the Network Upgrades and ~~System Protection~~ Direct Assignment Facilities and shall set forth such

costs in sufficient detail to enable Customer to compare the actual costs with the estimates and to ascertain deviations, if any, from the cost estimates. Transmission Owner shall refund, with interest (calculated in accordance with 18 C.F.R. Section 35.19a(a)(2)(iii)), to Customer any amount by which the actual payment by Customer for estimated costs exceeds the actual costs of construction within thirty (30) Calendar Days of the issuance of such final construction invoice.

6.5 Interest. Interest on any unpaid amounts shall be calculated in accordance with 18 C.F.R. § 35.19a(a)(2)(iii).

6.6 Payment During Dispute. In the event of a billing dispute among the Parties, Transmission Owner shall continue to construct the Network Upgrades and ~~System Protection~~ Direct Assignment Facilities under this Agreement as long as Customer: (i) continues to make all payments not in dispute; and (ii) pays to Transmission Provider or Transmission Owner or into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If Customer fails to meet these two requirements, then Transmission Provider may or, at Transmission Owner's request upon Customer's failure to pay Transmission Owner, shall provide notice to Customer of a Default pursuant to Article 9. Within thirty (30) Calendar Days after the resolution of the dispute, the Party that owes money to another Party shall pay the amount due with interest calculated in accord with the methodology set forth in 18 C.F.R. § 35.19a(a)(2)(iii).

ARTICLE 7 ASSIGNMENT

7.1 Assignment. This Agreement may be assigned by any Party only with the written consent of the other Parties; provided that a Party may assign this Agreement without the consent of the other Parties to any affiliate of the assigning Party with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this Agreement; and provided further that Customer shall have the right to assign this Agreement, without the consent of either Transmission Provider or Transmission Owner, for collateral security purposes to aid in providing financing for the Facility, provided that Customer will promptly notify Transmission Provider and Transmission Owner of any such assignment. Any financing arrangement entered into by Customer pursuant to this Article will provide that prior to or upon the exercise of the secured Party's, trustee's or assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify Transmission Provider and Transmission Owner of the date and particulars of any such exercise of assignment right(s), including providing Transmission Provider and Transmission Owner with proof that it meets the requirements of Article 6.1. Any attempted assignment that violates this Article is void and ineffective. Any assignment under this Agreement shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.

ARTICLE 8 INDEMNITY

8.1 General. To the extent permitted by law, a Party (the “Indemnifying Party”) shall at all times indemnify, defend, and hold the other Parties (each an “Indemnified Party”) harmless from Loss, only as provided in the Tariff.

8.1.1 Indemnified Party. If an Indemnified Party is entitled to indemnification under this Article 8 as a result of a claim by a third party, and the Indemnifying Party fails, after notice and reasonable opportunity to proceed under Article 8.1, to assume the defense of such claim, such Indemnified Party may at the expense of the Indemnifying Party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.

8.1.2 Indemnifying Party. If an Indemnifying Party is obligated to indemnify and hold any Indemnified Party harmless under this Article 8, the amount owing to the Indemnified Party shall be the amount of such Indemnified Party’s actual Loss, net of any insurance or other recovery.

8.1.3 Indemnity Procedures. Promptly after receipt by an Indemnified Party of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in Article 8.1 may apply, the Indemnified Party shall notify the Indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a Party’s indemnification obligation unless such failure or delay is materially prejudicial to the Indemnifying Party.

The Indemnifying Party shall have the right to assume the defense thereof with counsel designated by such Indemnifying Party and reasonably satisfactory to the Indemnified Party. If the defendants in any such action include one or more Indemnified Parties and the Indemnifying Party and if the Indemnified Party reasonably concludes that there may be legal defenses available to it and/or other Indemnified Parties which are different from or additional to those available to the Indemnifying Party, the Indemnified Party shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on its own behalf. In such instances, the Indemnifying Party shall only be required to pay the fees and expenses of one additional attorney to represent an Indemnified Party or Indemnified Parties having such differing or additional legal defenses.

The Indemnified Party shall be entitled, at its expense, to participate in any such action, suit or proceeding, the defense of which has been assumed by the Indemnifying Party. Notwithstanding the foregoing, the Indemnifying Party (i) shall not be entitled to assume and control the defense of any such action, suit or proceedings if and to the extent that, in the opinion of the Indemnified Party and its counsel, such action, suit or proceeding involves the potential imposition of

criminal liability on the Indemnified Party, or there exists a conflict or adversity of interest between the Indemnified Party and the Indemnifying Party, in such event the Indemnifying Party shall pay the reasonable expenses of the Indemnified Party, and (ii) shall not settle or consent to the entry of any judgment in any action, suit or proceeding without the consent of the Indemnified Party, which shall not be reasonably withheld, conditioned or delayed.

- 8.2 Consequential Damages.** In no event shall any Party be liable to any other Party under any provision of this Agreement for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to another Party under another agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.

ARTICLE 9 BREACH, CURE AND DEFAULT

- 9.1 Events of Breach.** A Breach of this Agreement shall include:

- (a) The failure to pay any amount when due;
- (b) The failure to comply with any material term or condition of this Agreement, including but not limited to any material Breach of a representation, warranty or covenant made in this Agreement;
- (c) If a Party (i) is adjudicated bankrupt; (ii) files a voluntary petition in bankruptcy under any provision of any federal or state bankruptcy law or shall consent to the filing of any bankruptcy or reorganization petition against it under any similar law; (iii) makes a general assignment for the benefit of its creditors; or (iv) consents to the appointment of a receiver, trustee or liquidator;
- (d) Assignment of this Agreement in a manner inconsistent with the terms of this Agreement;
- (e) Failure of a Party to provide such access rights, or a Party's attempt to revoke access or terminate such access rights, as provided under this Agreement or ~~the any~~ related ~~GIA; or~~ agreements.
- (f) Failure of a Party to provide information or data to another Party as required under this Agreement, provided the Party entitled to the information or data under this Agreement requires such information or data to satisfy its obligations under this Agreement.

9.2 Notice of Breach, Cure and Default. Upon the occurrence of an event of Breach, the Party not in Breach, when it becomes aware of the Breach, shall give written notice of the Breach to the Breaching Party and to any other person representing a Party to this Agreement identified in writing to the other Party in advance. Such notice shall set forth, in reasonable detail, the nature of the Breach, and where known and applicable, the steps necessary to cure such Breach.

9.2.1 Upon the occurrence described in part (c) of Article 9.1, the Party experiencing such occurrence shall notify the other Party in writing within seven (7) Calendar Days after the commencement of such occurrence. Upon receiving written notice of the Breach hereunder, the Breaching Party shall have a period to cure such Breach (sometimes hereinafter referred as (“Cure Period”) which shall be thirty (30) Calendar Days unless such Breach is due to an occurrence under Article 9.1(a) or (c) in which case the cure period will be five (5) Business Days.

9.2.2 If the Breach is such that it cannot be cured within the Cure Period, the Breaching Party will commence in good faith all steps as are reasonable and appropriate to cure the Breach within such Cure Period and thereafter diligently pursue such action to completion. In the event the Breaching Party fails to:

- (a) cure the Breach, or to commence reasonable and appropriate steps to cure the Breach, within the Cure Period; or,
- (b) completely cure the Breach within sixty (60) Calendar Days if the Breach occurs pursuant to Article 9.1(b), (d), (e) or (f),

the Breaching Party will be in Default of this Agreement and the non-Breaching Parties may, at their option, either in concert or individually, (1) act to terminate this Agreement for cause by notifying the other Parties in writing, or (2) take whatever action at law or in equity as may appear necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreement, or covenants under this Agreement.

9.3 Rights in the Event of Default. Notwithstanding the foregoing, upon the occurrence of an event of Default, any non-Defaulting Party shall be entitled to exercise all rights and remedies it may have in equity or at law.

ARTICLE 10 TERMINATION OF AGREEMENT

10.1 Expiration of Term. Except as otherwise specified in this Article 10, the Parties’ obligations under this Agreement shall terminate at the conclusion of the term of this Agreement.

10.2 Termination. In addition to the termination provisions set forth in Article 2.2, a Party may terminate this Agreement upon the Default of another Party in accordance with this

Agreement. Subject to the limitations set forth in Article 10.3, in the event of a Default, a non-Defaulting Party may terminate this Agreement only upon the later of (i) its giving of written notice of termination to the other Parties; and (ii) unless no longer required by FERC, the filing at FERC of a notice of termination for this Agreement, which filing must be accepted for filing by FERC.

10.3 Disposition of Facilities Upon Termination of Agreement.

10.3.1 Transmission Provider and Transmission Owner Obligations. Upon termination of this Agreement, unless otherwise agreed by the Parties in writing, Transmission Owner:

- (a) shall, prior to the construction and installation of any portion of the Network Upgrades and ~~System Protection~~ Direct Assignment Facilities and to the extent possible, cancel any pending orders of, or return, such equipment or material for such Network Upgrades and ~~System Protection~~ Direct Assignment Facilities;
- (b) may keep in place any portion of the Network Upgrades and ~~System Protection~~ Direct Assignment Facilities already constructed and installed; and,
- (c) shall perform such work as may be necessary to ensure the safety of persons and property and to preserve the integrity of the Transmission System (e.g., construction demobilization to return the system to its original state, wind-up work).

10.3.2 Customer Obligations. Upon billing by Transmission Owner, Customer shall reimburse Transmission Owner for any costs incurred by Transmission Owner in performance of the actions required or permitted by Article 10.3.1 and for the cost of any Network Upgrades and ~~System Protection~~ Direct Assignment Facilities described in Appendix A. Transmission Owner and Transmission Provider shall use Reasonable Efforts to minimize costs and shall offset the amounts owed by any salvage value of facilities, if applicable. Customer shall pay these costs pursuant to Article 6.3 of this Agreement.

10.3.3 Pre-construction or Installation. Upon termination of this Agreement and prior to the construction and installation of any portion of the Network Upgrades and ~~System Protection~~ Direct Assignment Facilities, Transmission Owner may, at its option, retain any portion of such Network Upgrades and ~~System Protection~~ Direct Assignment Facilities not cancelled or returned in accordance with Article 10.3.1(a), in which case Transmission Owner shall be responsible for all costs associated with procuring such Network Upgrades and ~~System Protection~~ Direct Assignment Facilities. To the extent that Customer has already paid Transmission Owner for any or all of such costs, Transmission Owner shall transfer such amounts to ~~Transmission Provider who then shall assess the~~

~~financial impact as defined by Section 7.8 of Attachment X.~~ the Customer. If Transmission Owner elects to not retain any portion of such facilities, Transmission Owner shall convey and make available to Customer such facilities as soon as practicable after Customer's payment for such facilities.

- 10.4 Survival of Rights.** Termination or expiration of this Agreement shall not relieve any Party of any of its liabilities and obligations arising hereunder prior to the date termination becomes effective, and each Party may take whatever judicial or administrative actions as appear necessary or desirable to enforce its rights hereunder. The applicable provisions of this Agreement will continue in effect after expiration, or early termination hereof to the extent necessary to provide for (A) final billings, billing adjustments and other billing procedures set forth in this Agreement; (B) the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect; and (C) the confidentiality provisions set forth in Article 12.

ARTICLE 11 SUBCONTRACTORS

- 11.1 Subcontractors.** Nothing in this Agreement shall prevent a Party from utilizing the services of subcontractors, as it deems appropriate, to perform its obligations under this Agreement; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services and each Party shall remain primarily liable to the other Parties for the performance of such subcontractor.

11.1.1 Responsibility of Principal. The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. In accordance with the provisions of this Agreement, each Party shall be fully responsible to the other Parties for the acts or omissions of any subcontractor it hires as if no subcontract had been made. Any applicable obligation imposed by this Agreement upon a Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

11.1.2 No Third-Party Beneficiary. Except as may be specifically set forth to the contrary herein, no subcontractor or any other party is intended to be, nor will it be deemed to be, a third-party beneficiary of this Agreement.

11.1.3 No Limitation by Insurance. The obligations under this Article 11 will not be limited in any way by any limitation of any insurance policies or coverages, including any subcontractor's insurance.

ARTICLE 12 CONFIDENTIALITY

- 12.1 Confidentiality.** Confidential Information shall include, without limitation, all information relating to a Party's technology, research and development, business affairs, and pricing, and any information supplied by a Party to another Party prior to the execution of this Agreement.

Information is Confidential Information only if it is clearly designated or marked in writing as confidential on the face of the document, or, if the information is conveyed orally or by inspection, if the Party providing the information orally informs the Party receiving the information that the information is confidential. The Parties shall maintain as confidential any information that is provided and identified by a Party as Critical Energy Infrastructure Information (CEII), as that term is defined in 18 C.F.R. Section 388.113(c).

Such confidentiality will be maintained in accordance with this Article 12. If requested by the receiving Party, the disclosing Party shall provide in writing, the basis for asserting that the information referred to in this Article warrants confidential treatment, and the requesting Party may disclose such writing to the appropriate Governmental Authority. Each Party shall be responsible for the costs associated with affording confidential treatment to its information.

- 12.1.1 Term.** During the term of this Agreement, and for a period of three (3) years after the expiration or termination of this Agreement, except as otherwise provided in this Article 12 or with regard to CEII, each Party shall hold in confidence and shall not disclose to any person Confidential Information. CEII shall be treated in accordance with Commission policies and regulations.

- 12.1.2 Scope.** Confidential Information shall not include information that the receiving Party can demonstrate: (1) is generally available to the public other than as a result of a disclosure by the receiving Party; (2) was in the lawful possession of the receiving Party on a non-confidential basis before receiving it from the disclosing Party; (3) was supplied to the receiving Party without restriction by a non-Party, who, to the knowledge of the receiving Party after due inquiry, was under no obligation to the disclosing Party to keep such information confidential; (4) was independently developed by the receiving Party without reference to Confidential Information of the disclosing Party; (5) is, or becomes, publicly known, through no wrongful act or omission of the receiving Party or Breach of this Agreement; or (6) is required, in accordance with Article 12.1.7 of this Agreement, to be disclosed by any Governmental Authority or is otherwise required to be disclosed by law or subpoena, or is necessary in any legal proceeding establishing rights and obligations under this Agreement. Information designated as Confidential Information will no longer be deemed confidential if the Party that designated the information as confidential notifies the receiving Party that it no longer is confidential.

- 12.1.3 Release of Confidential Information.** No Party shall release or disclose Confidential Information to any other person, except to its Affiliates (limited by

the Standards of Conduct requirements), subcontractors, employees, agents, consultants, or to non-Parties who may be or are considering providing financing to or equity participation with Customer, or to potential purchasers or assignees of Customer, on a need-to-know basis in connection with this Agreement, unless such person has first been advised of the confidentiality provisions of this Article 12 and has agreed to comply with such provisions. Notwithstanding the foregoing, a Party providing Confidential Information to any person shall remain primarily responsible for any release of Confidential Information in contravention of this Article 12.

12.1.4 Rights. Each Party retains all rights, title, and interest in the Confidential Information that it discloses to the receiving Party. The disclosure by a Party to the receiving Party of Confidential Information shall not be deemed a waiver by the disclosing Party or any other person or entity of the right to protect the Confidential Information from public disclosure.

12.1.5 No Warranties. By providing Confidential Information, no Party makes any warranties or representations as to its accuracy or completeness. In addition, by supplying Confidential Information, no Party obligates itself to provide any particular information or Confidential Information to another Party nor to enter into any further agreements or proceed with any other relationship or joint venture.

12.1.6 Standard of Care. Each Party shall use at least the same standard of care to protect Confidential Information it receives as it uses to protect its own Confidential Information from unauthorized disclosure, publication or dissemination. Each Party may use Confidential Information solely to fulfill its obligations to another Party under this Agreement or its regulatory requirements.

12.1.7 Order of Disclosure. If a court or a Government Authority or entity with the right, power, and apparent authority to do so requests or requires any Party, by subpoena, oral deposition, interrogatories, requests for production of documents, administrative order, or otherwise, to disclose Confidential Information, that Party shall provide the disclosing Party with prompt notice of such request(s) or requirement(s) so that the disclosing Party may seek an appropriate protective order or waive compliance with the terms of this Agreement. Notwithstanding the absence of a protective order or waiver, the Party may disclose such Confidential Information which, in the opinion of its counsel, the Party is legally compelled to disclose. Each Party will use Reasonable Efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished.

12.1.8 Termination of Agreement. Upon termination of this Agreement for any reason, each Party shall, within ten (10) Business Days of receipt of a written request from another Party, use Reasonable Efforts to destroy, erase, or delete (with such destruction, erasure, and deletion certified in writing to the requesting Party) or

return to the requesting Party any and all written or electronic Confidential Information received from the requesting Party, except that each Party may keep one copy for archival purposes, provided that the obligation to treat it as Confidential Information in accordance with this Article 12 shall survive such termination.

12.1.9 Remedies. The Parties agree that monetary damages would be inadequate to compensate a Party for another Party's Breach of its obligations under this Article 12. Each Party accordingly agrees that the disclosing Party shall be entitled to equitable relief, by way of injunction or otherwise, if the receiving Party Breaches or threatens to Breach its obligations under this Article 12, which equitable relief shall be granted without bond or proof of damages, and the breaching Party shall not plead in defense that there would be an adequate remedy at law. Such remedy shall not be deemed an exclusive remedy for the Breach of this Article 12, but shall be in addition to all other remedies available at law or in equity. The Parties further acknowledge and agree that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope. No Party, however, shall be liable for indirect, incidental, or consequential or punitive damages of any nature or kind resulting from or arising in connection with this Article 12.

12.1.10 Disclosure to FERC, its Staff or a State. Notwithstanding anything in this Article 12 to the contrary, and pursuant to 18 C.F.R. § 1b.20, if FERC or its staff, during the course of an investigation or otherwise, requests information from a Party that is otherwise required to be maintained in confidence pursuant to this Agreement, the Party shall provide the requested information to FERC or its staff, within the time provided for in the request for information. In providing the information to FERC or its staff, the Party must, consistent with 18 C.F.R. § 388.112, request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. Parties are prohibited from notifying the other Parties to this Agreement prior to the release of the Confidential Information to FERC or its staff. The Party shall notify the other Parties to the Agreement when it is notified by FERC or its staff that a request to release Confidential Information has been received by FERC, at which time any of the Parties may respond before such information would be made public, pursuant to 18 C.F.R. § 388.112. Requests from a state regulatory body conducting a confidential investigation shall be treated in a similar manner if consistent with the applicable state rules and regulations.

12.1.11 Subject to the exception in Article 12.1.10, any information that a disclosing Party claims is competitively sensitive, commercial or financial information under this Agreement shall not be disclosed by the receiving Party to any person not employed or retained by the receiving Party, except to the extent disclosure is (i) required by law; (ii) reasonably deemed by the disclosing Party to be required to be disclosed in connection with a dispute between or among the

Parties, or the defense of litigation or dispute; (iii) otherwise permitted by consent of the disclosing Party, such consent not to be unreasonably withheld; or (iv) necessary to fulfill its obligations under this Agreement or as the Regional Transmission Organization or a Local Balancing Authority operator including disclosing the Confidential Information to a regional or national reliability organization. The Party asserting confidentiality shall notify the receiving Party in writing of the information that Party claims is confidential. Prior to any disclosures of that Party's Confidential Information under this subparagraph, or if any non-Party or Governmental Authority makes any request or demand for any of the information described in this subparagraph, the Party who received the Confidential Information from the disclosing Party agrees to promptly notify the disclosing Party in writing and agrees to assert confidentiality and cooperate with the disclosing Party in seeking to protect the Confidential Information from public disclosure by confidentiality agreement, protective order or other reasonable measures.

ARTICLE 13 INFORMATION ACCESS AND AUDIT RIGHTS

- 13.1 Information Access.** Each Party shall make available to the other Parties information necessary to verify the costs incurred by the other Parties for which the requesting Party is responsible under this Agreement and carry out obligations and responsibilities under this Agreement, provided that the Parties shall not use such information for purposes other than those set forth in this Article 13.1 and to enforce their rights under this Agreement.
- 13.2 Audit Rights.** Subject to the requirements of confidentiality under Article 12 of this Agreement, the accounts and records related to the design, engineering, procurement, and construction of the Network Upgrades and ~~System Protection~~[Direct Assignment](#) Facilities shall be subject to audit during the period of this Agreement and for a period of twenty-four (24) months following the Transmission Owner's issuance of a final invoice in accordance with Article 6.4. Customer at its expense shall have the right, during normal business hours, and upon prior reasonable notice to the other Parties, to audit such accounts and records. Any audit authorized by this Article 13.2 shall be performed at the offices where such accounts and records are maintained and shall be limited to those portions of such accounts and records that relate to obligations under this Agreement.

ARTICLE 14 DISPUTES

- 14.1 Submission.** Any claim or dispute, which a Party may have against another Party, arising out of this Agreement shall be submitted for resolution in accordance with the dispute resolution provisions of the Tariff.

14.2 Rights under the Federal Power Act. Nothing in this Article 14 shall restrict the rights of any Party to file a complaint [or a petition](#) with FERC under relevant provisions of the Federal Power Act.

14.3 Equitable Remedies. Nothing in this Article shall prevent a Party from pursuing or seeking any equitable remedy available to it under Applicable Laws and Regulations, at any time, before a Governmental Authority.

ARTICLE 15 NOTICES

15.1 General. Any notice, demand or request required or permitted to be given by a Party to another Party and any instrument required or permitted to be tendered or delivered by a Party in writing to another Party may be so given, tendered or delivered, as the case may be, by depositing the same with the United States Postal Service with postage prepaid, for transmission by certified or registered mail, addressed to the Parties, or personally delivered to the Parties, at the address set out below:

To Transmission Provider:

MISO

Attn: Director, ~~Transmission Access Planning~~ [Resource Utilization](#)
720 City Center Drive
Carmel, IN 46032

To Transmission Owner:

[Minnesota Power](#)
[Vice President, Transmission & Distribution](#)
[30 West Superior Street](#)
[Duluth, MN 55802](#)

To Customer:

[Minnesota Power](#)
[Vice President, Strategy and Planning](#)
[30 West Superior Street](#)
[Duluth, MN 55802](#)

15.2 Billings and Payments. Billings and payments shall be sent to the addresses shown in Article 15.1 unless otherwise agreed to by the Parties.

15.3 Alternative Forms of Notice. Any notice or request required or permitted to be given by a Party to another Party and not required by this Agreement to be given in writing may be so given by telephone, facsimile or email to the telephone numbers and email addresses set out below:

To Transmission Provider:

MISO

Voice telephone – (317) 249-5700

Facsimile telephone – (317) 249-5358

Email address – misotap@misoenergy.org or

MISOTransmissionAccessPlanning@misoenergy.org

To Transmission Owner:

Minnesota Power

Director – System Operations, Performance & Compliance

Voice telephone – (218) 723-7414

Email address-lfrisk@mnpower.com or

MPTransmissioninformationNotifications@mnpower.com

To Customer:

Minnesota Power

RTO Coordination Manager

Voice telephone – (218) 723-7466

Email address – rnyholm@mnpower.com

- 15.4 DUNS #.** If Transmission Owner and Customer have not obtained DUNS numbers by the time this Agreement is executed, Transmission Owner and Customer will forward their DUNS numbers within five (5) Business Days of having obtained such numbers to Transmission Provider by facsimile telephone or email to the fax number or email set out below:

Transmission Owner

DUNS Number: 617232889

Customer

DUNS Number: 617232889

- 15.5 Notification of In-Service Date.** Transmission Owner will serve to Transmission Provider a copy of Appendix B as forwarded to Customer on the same day to the address shown in Article 15.1, and by facsimile telephone to the numbers set out below:

To Transmission Provider:

MISO

Facsimile telephone – (317) 249-5703

And copy to

MISO

Attn: Director, ~~Transmission Access Planning~~ [Resource Utilization](#)

720 City Center Drive

Carmel, IN 46032

ARTICLE 16 MISCELLANEOUS

- 16.1 Waiver.** Except as otherwise provided for in this Agreement, the failure of any Party to comply with any obligation, covenant, agreement, or condition herein may be waived by the Parties entitled to the benefits thereof only by a written instrument signed by the Parties granting such waiver. Any waiver at any time by a Party of its rights with respect to a Default under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall not be deemed a waiver or continuing waiver with respect to any subsequent Default or other matter.
- 16.2 Governing Law.** The validity, interpretation and performance of this Agreement and each of its provisions shall be governed by the laws of the state of [Minnesota](#) where [approximately 50 percent of](#) the Network Upgrades and/or ~~System Protection~~[Direct Assignment](#) Facilities referenced in Appendix A are located without regard to its conflicts of law principles.
- 16.3 Headings Not to Affect Meaning.** The descriptive headings of the various Sections and Articles of this Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms and provisions hereof.
- 16.4 Amendments and Rights Under the Federal Power Act.** Transmission Provider shall have the right to make a unilateral filing with FERC to modify this Agreement with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation under Section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder, and Transmission Owner and Customer shall have the right to make a unilateral filing with FERC to modify this Agreement pursuant to Section 206 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder; provided, however, that each Party shall have the right to protest any such filing and to participate fully in any proceeding before FERC in which such modifications may be considered. Nothing in this Agreement shall limit the rights of the Parties or of FERC under Sections 205 or 206 of the Federal Power Act and FERC's rules and regulations thereunder, except to the extent that the Parties otherwise mutually agree as provided herein.
- 16.5 Entire Agreement.** This Agreement, together with all the exhibits, constitutes the final and entire written agreement among the Parties hereto with reference to the subject matter hereof, and is a complete and exclusive statement of those terms and conditions and supersedes all prior negotiations, representations or agreements, either written or oral, with respect to the specific subject matter of this Agreement. No change or modification as to any of the provisions hereof shall be binding on any Party unless reduced to writing and approved by the duly authorized officer or agent of Customer, Transmission Owner, and Transmission Provider.
- 16.6 Counterparts.** This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

- 16.7 Binding Effect.** This Agreement and the rights and obligations hereof, shall be binding upon and shall inure to the benefit of the Parties hereto and their successors and assigns. No person or party shall have any rights, benefits or interests, direct or indirect, arising from this Agreement except the Parties hereto, their successors and authorized assigns. The Parties expressly disclaim any intent to create any rights in any person or party as a third party beneficiary to this Agreement.
- 16.8 Conflicts.** In the event of a conflict between the body of this Agreement and any attachment, appendix or exhibit hereto, the terms and provisions of the body of this Agreement shall prevail and be deemed to be the final intent of the Parties.
- 16.9 Regulatory Requirements.** Each Party's obligations under this Agreement shall be subject to its receipt of any required approval or certificate from one or more Governmental Authorities in the form and substance satisfactory to the receiving Party, or the Party making any required filings with, or providing notice to, such Governmental Authorities, and the expiration of any time period associated therewith. Each Party shall in good faith seek these other approvals as soon as is reasonably practicable.

ARTICLE 17 REPRESENTATIONS AND WARRANTIES

- 17.1 General.** Each Party hereby represents, warrants and covenants as follows with these representations, warranties, and covenants effective as to the Party during the full time this Agreement is effective:
- 17.1.1 Good Standing.** Such Party is duly organized or formed, as applicable, validity existing and in good standing under the laws of its state of organization or formation, and is in good standing under the laws of the respective state(s) of its organization as stated in the preamble of this Agreement.
- 17.1.2 Authority.** Such Party has the right, power and authority to enter into this Agreement, to become a party hereto and to perform its obligations hereunder, and this Agreement is a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms.
- 17.1.3 No Conflict.** The execution, delivery and performance of this Agreement does not violate or conflict with the organizational or formation documents, or bylaws or operating agreement, of such Party, or any judgment, license, permit or order or material agreement or instrument applicable to or binding upon such Party or any of its assets.
- 17.1.4 Consent and Approval.** That it has sought or obtained, or, in accordance with this Agreement will seek or obtain, each consent, approval, authorization or order of, or acceptance of a filing with, or notice to, any Governmental Authority with

jurisdiction concerning this Agreement, in connection with the execution, delivery and performance of this Agreement.

17.1.5 Solvency. That such Party is financially solvent.

IN WITNESS WHEREOF, the Parties have executed this Agreement in multiple originals, each of which shall constitute and be an original Agreement among the Parties.

Transmission Provider
Midcontinent Independent System Operator, Inc.

By: _____
Name: _____
Title: _____

Transmission Owner
~~{Transmission Owner}~~

Minnesota Power

By: _____
Name: _____
Title: _____

Customer
~~{Customer}~~

Minnesota Power

By: _____
Name: _____
Title: _____

Project No. _____

[Square Butte 90481026 95418167 FCA](#)

Facilities Construction Agreement
APPENDIX A
NETWORK UPGRADES, COST ESTIMATES AND RESPONSIBILITY,
TRANSMISSION CREDITS, CONSTRUCTION SCHEDULE AND MONTHLY
PAYMENT SCHEDULE

This Appendix A is a part of the Facilities Construction Agreement between Customer, Transmission Owner, and Transmission Provider. Terms used in this Appendix A with initial capitalization not defined in this Appendix A shall have the meaning set out in the Agreement

~~1.1 — Transmission Owner's [Interconnection Facilities] [Connection Facilities]~~

~~1.2~~ The upgrades required to be made by the Transmission Owner under this Agreement because of the Transmission Service Request include Direct Assignment Facilities and Network Upgrades, as defined in Module B and Attachment N of the Tariff. The Network Upgrades under this Agreement are governed by Module B and Attachment N of the Tariff.

1.1 Network Upgrades to be installed by Transmission Owner.

~~1.2.1 — Transmission Owner Substation Network Upgrades~~

~~1.2.2 — Transmission Owner Transmission Line Network Upgrades:~~

~~1.2.3 — Transmission Owner Transmission Line Permitting~~

~~1.2.4 — Cost Estimates and Responsibility.~~

1.2.1.1 **Transmission Owner Substation Network Upgrades:** To modernize the terminals of the existing Square Butte HVDC Line and implement the latest voltage source converter ("VSC") HVDC technology, new buildings and electrical infrastructure need to be constructed on a new site near the existing Center and Arrowhead HVDC terminals. Due to the specialized nature of the technology, the new VSC HVDC converter stations will be delivered as turnkey projects by the original equipment manufacturer ("OEM"). The scope of supply for the HVDC OEM will include the relocated converter stations, including valves, converter transformers, smoothing reactors, DC equipment, AC circuit breakers, control & protection, and all associated facilities. The new VSC HVDC converter stations will be designed to interconnect at 345 kV on the AC system side. To accommodate interconnection of the new VSC HVDC converter stations, new AC interconnection facilities will be constructed including new 345/230 kV substations, 345 kV transmission lines, and 230 kV transmission lines. New AC interconnection facilities are listed below.

In Minnesota:

- Construction of a new St. Louis County 345/230 kV Substation located less than one mile west of the Arrowhead Substation
- Construction of a new 345 kV transmission line from the HVDC converter station to the St. Louis County Substation

- Construction of two parallel 230 kV lines from the St. Louis County Substation to the existing Arrowhead Substation
- At Arrowhead Substation, the two new 230 kV lines will be interconnected to the existing HVDC Pole 1 and Pole 2 bus positions, which will be rebuilt with higher-capacity bus and electrical equipment to accommodate the increased HVDC capacity.
- A short portion of the existing ± 250 kV HVDC Line in Minnesota will be reconfigured to terminate at the new HVDC converter station.

In North Dakota:

- Establishment of a new Nelson Lake 230 kV Switching Station to tie together the existing Minnesota Power Square Butte East – Bison 230 kV Line with the existing Great River Energy Square Butte – Stanton 230 kV Line.
- Construction of a second 230 kV circuit between Nelson Lake and Square Butte East using existing double-circuit capable structures.
- Addition of a 230 kV breaker at the Square Butte East Substation to accommodate the second Nelson Lake – Square Butte East 230 kV circuit
- Expansion of the Nelson Lake 230 kV Switching Station to add a 345/230 kV transformer and 345 kV line entrance.
- Construction of a new 345 kV line from Nelson Lake to the new HVDC converter station
- Construction of a new 345 kV substation at the new HVDC converter station site
- A portion of the existing ± 250 kV HVDC Line in North Dakota will need to be reconfigured to terminate at the new HVDC converter station.

Additional equipment upgrades may be deemed necessary by the Transmission Owner or the HVDC OEM during the specification, detailed design, and engineering phase of the project.

1.1.2 Transmission Owner Transmission Line Network Upgrades: The upgrades necessary to increase the capacity of the HVDC transmission line from 550 MW to 900 MW are likely to consist primarily of replacing existing structures with taller structures to increase conductor-to-ground clearance at the higher operating temperature. A short segment of the transmission line with a smaller conductor will need to be rebuilt with a larger conductor.

1.1.3 Transmission Owner Transmission Line Permitting: Due to the relocation of the converter stations and the length of new AC interconnection facilities required to re-connect to the existing system, the HVDC Modernization Project will require state-level permits in both Minnesota and North Dakota. In Minnesota, a Certificate of Need and Route Permit will be required from the State of Minnesota. In North Dakota, a Certificate of Corridor Compatibility and a Route Permit will be required. Minnesota Power will obtain the necessary permits in both states

1.1.4 Cost Estimates and Responsibility. The estimated total cost for the Network Upgrades is \$878,000,000. These costs are shared by the Transmission Owner and Customer. The estimated cost to be paid by the Customer for Transmission Service

Requests 90481026 & 95418167 is \$205,000,000. The Customer(s) hereby acknowledge and agree that the costs, expenses, and charges set out in Table 1 are only an estimate and that the Customer(s) shall pay the Transmission Owner for their allocated amounts for all costs, expenses, and charges. Updated estimates will be provided annually by the Transmission Owners on request from the Customer.

This is detailed below in Table 1 and is subject to applicable Tax Gross.

Table 1: Network Upgrades Cost Details

<u>HVDC Modernization Project</u>	<u>Total Estimated Cost</u>	<u>Directly Assigned Cost Assigned to Transmission Service Requests #90481026 & #95418167</u>
<u>Converter Station Replacement</u>	<u>\$705,000,000</u>	<u>\$165,000,000</u>
<u>Interconnections to AC System</u>	<u>\$115,000,000</u>	<u>\$15,000,000</u>
<u>Transmission Line Modification</u>	<u>\$58,000,000</u>	<u>\$25,000,000</u>
<u>Internal & Professional Services</u>	<u>Included</u>	<u>Included</u>
<u>Total (in 2022 dollars)</u>	<u>\$878,000,000</u>	<u>\$205,000,000</u>

1.1.4.1 Major Material List of Transmission Owner's Network Upgrades – See Exhibit C2

~~1.3 System Protection~~ **1.2 Direct Assignment** Facilities – None.

1.43 First Equipment Order (including permitting). See Table 2 below.

1.43.1. Permitting And Land Rights – Transmission Owner Network Upgrades – See Section 1.8.

1.54 Transmission Credits. See Article 3.2.2 of the Agreement.

1.65 Construction Schedule. Where applicable, construction of the Transmission Owner ~~[Interconnection Facilities]~~ ~~[Connection Facilities]~~, Network Upgrades and Special

Protection Facilities is scheduled as follows and will be periodically updated as necessary:

Table 2: Transmission Owner Construction Activities

MILESTONE NUMBER	Milestones Description	START DATE	END DATE
1.	Facilities Construction Agreement Executed.	Aug/Sep-2023	
2.	Minnesota Certificate of Need & Route Permit Applications Filed.	Jun-2023	
3.	North Dakota Certificate of Corridor Compatibility and Route Permit Applications Filed.	Oct-2023	
4.	Begin Front End Engineering & Design with HVDC OEM.	Jan-2024	
5.	Major Permits Received in Minnesota & North Dakota.	Jul-2024	
6.	Order Long Leadtime Equipment for AC Substations.	Nov-2024	
7.	Initial Synchronization Date Clearing Begins.	Jan-2025	
8.	Construction of AC Interconnection Facilities Begins.	May-2025	
9.	Construction of HVDC Transmission Line Upgrades Begins.	Aug-2025	
10.	Receive Firm Proposal from HVDC OEM.	Aug-2026	
11.	Execute Firm EPC Contract with HVDC OEM.	Oct-2026	
12.	Construction of HVDC Converter Stations Begins.	Oct-2027	
13.	Commercial Operation In-Service Date.	Apr-2030	

Note: ~~Construction~~ The construction schedule assumes that the Transmission Owner has obtained final authorizations and security from Customer and all necessary permits from Governmental Authorities as necessary prerequisites to commence construction of any of the Network Upgrades and Special Protection Facilities ~~or Transmission Owner [Interconnection Facilities] [Connection Facilities].~~

1.7.6 Payment Schedule.

1.7.6.1 Timing of and Adjustments to Customer's Payments and Security.

1.7.6.2 Monthly Payment Schedule. ~~The Customer's payment schedule is as follows.~~

Table ____: ~~Customer's Payment/Security Obligations for~~ Following approval of the state permits set forth in Section 1.2.3, in accordance with Attachment N, the Customer will begin paying a monthly dollar assessment. Monthly payments by the Customer will continue until Transmission Owner has recovered the cost of all Directly Assigned Facilities and Transmission Owner Network Upgrades ~~and System Protection Facilities.~~

~~MILESTONE NUMBER~~	~~DESCRIPTION~~	~~DATE~~
~~*~~		
	~~Initial Synchronization Date~~	
	~~Commercial Operation Date~~	

~~Note: Customer's payment or provision of security as provided in this Agreement operates as a condition precedent to Transmission Owner's obligations to construct any Network Upgrades or System Protection Facilities, and failure to meet this schedule will constitute a Breach pursuant to Article 9.1 of this Agreement.~~

~~1.8~~

A Customer that fails to make payments when due will be given a Breach notice. Unless the Breach is cured in accordance with Article 9 of this agreement, the Transmission Owner is relieved from performing under this Agreement. Failure by any Customer to comply with Article 9.2.2(A) or 9.2.2(B) relative to such Breach may, pursuant to Article 9.2.2 of the Agreement, result in termination of the Agreement as to that Customer.

1.6.3 Security Amount. Not later than thirty (30) Days after Transmission Owner has received all Certificate of Need approvals, Customer shall provide MP security in the amount of Two Hundred Five Million Dollars (\$205,000,000) consisting of either or a combination of a letter of credit and/or cash escrow as set forth under Section 1.7.4 ("Initial Development Security"). Sixty (60) Days after termination of this Agreement, except as set forth in Section 1.7.5, Transmission Owner shall promptly return the Initial Development Security to Customer.

1.6.4 Security Characteristics and Draw

1.6.4.1 Except as set forth under Section 1.7.3.1, Security shall be composed of either a Guaranty, a letter of credit as described in Section 1.7.4 or a cash escrow as described in Section 1.7.4.2, at Customer's option, or a combination of these options as long as the total amount of Security is not less than the amount then required. Notwithstanding the foregoing, the Guaranty amount may not comprise more than fifty percent (50%) of the overall total amount of Security, provided that if Customer has delivered a notice reducing the amount of Security required pursuant to Section 1.7.7, then the Guaranty may comprise up to 100% of the overall total amount of Security at the Guarantor's option. Customer shall be (i) permitted from time to time to change the form and combination of such posted Security provided that no Event of Default with respect to Customer then exists so long as Transmission Owner is provided timely Notice of the change, and (ii) required, if Customer has provided Security, or any portion thereof, in the form of a Guaranty, if the entity or entities providing a Guaranty no longer qualify as a Guarantor, Customer shall within ten (10) Business Days of Transmission Owner's Notice to do so (A) replace such Guaranty with either a Guaranty from an entity or entities meeting the requirements as a Guarantor and/or (B) deliver a letter of credit or performance bond as described in Section 1.7.4.3 and/or (C) supply a cash escrow as described in Section 1.7.4.2, at Customer's option, in any case, in the aggregate amount of the then applicable Security, less the aggregate amount of any prior draws on such Security. Upon receipt of such substitute Security, any such Guaranty shall be deemed cancelled.

1.6.4.2 If Customer elects to utilize a cash escrow as Security, it shall establish an interest-bearing escrow account with a commercial bank or other mutually acceptable escrow agent as escrow agent, and the account shall name Transmission Owner as the beneficiary for the duration of the existence of the escrow account. The escrow account shall be in United States currency, and funds in the account may be invested in a money-market fund, short-term treasury obligations, investment-grade commercial paper or other investment-grade investments with maturities of three (3) months or less. All income and interest earned on the accounts held in the escrow account shall accrue for the benefit of the Customer, and Customer may withdraw the income and interest earned at any time as long as the balance in the account after the withdrawal meets the minimum funding requirements of this Section 1.7.4.2. The escrow agreement shall require the escrow agent to notify Transmission Owner of the balance in the escrow account from time to time. The escrow agreement governing the account shall include terms that (i) prohibit termination of the account prior to establishment of alternative Security that satisfies all the requirements of this FCA; (ii) require Notice of no less than sixty (60) Days by the escrow agent to Transmission Owner prior to any termination of the account; and (iii) allow Transmission Owner to draw the entire balance in the escrow account up to the amount

of the Security if Security has not been replaced in accordance with this Agreement at least five (5) Business Days prior to the expiration or termination of the escrow account, and Transmission Owner shall hold such amounts in lieu of escrow until such time as the Security has been replaced, at which time the funds shall be returned to Customer. At the end of the Term, any balance remaining in the escrow account shall be returned or released to Customer.

1.6.4.3 In conjunction with or instead of a Guaranty or cash security as provided in Section 1.7.4.2, Customer may provide Security in the form of an irrevocable letter of credit in a commercially reasonable form and otherwise in compliance with the requirements of this Section 1.7.4 and in form and substance acceptable to the Issuer (as defined below) (the "LOC"). The LOC shall be issued by a state or federally chartered commercial bank which issues similar letters of credit in the ordinary course of its business and that (i) has an unsecured bond rating or long-term senior unsecured debt rating equivalent to A- or better as determined by at least two (2) rating agencies, one of which must be either S&P or Moody's, or, if these are not available, CAMEL ratings from the FDIC or OCC used in the banking industry no less than a 3 and (ii) has a minimum of One Hundred Million Dollars (\$100,000,000) in capital (the "Issuer"). The LOC must: (i) be issued for a minimum term of three hundred and sixty (360) Days, and, where permitted by the Issuer, shall be automatically extended for a period of one (1) year on each successive expiration date unless, at least ninety (90) Days before the current expiration date, the Issuer notifies Customer and Transmission Owner by certified mail that the Issuer has decided not to extend the letter of credit; (ii) provide that draws shall be payable upon presentation of a sight draft executed by an officer of Transmission Owner substantially in the form approved by Transmission Owner; and (iii) expressly permit partial and multiple draws. Any unused portion of the letter of credit shall be available, regardless of renewal, through the then current expiration date. Customer may replace the letter of credit with another Issuer which includes a provision for at least ninety (90) Days advance Notice to Transmission Owner and shall cause the renewal or extension of the LOC meeting the criteria set forth in this Section 1.7.4.3 within thirty (30) days prior to the expiration or cancellation of the then current LOC, and failure to do so shall authorize Transmission Owner to draw immediately upon the then current LOC. Transmission Owner shall then, at Customer's cost and with Customer's funds, place the amounts so drawn in an interest bearing escrow account in accordance with Section 1.7.4.2 above, until and unless Customer provides a substitute form of such security meeting the requirements of this Section 1.7.4. Security in the form of an irrevocable standby letter of credit shall be governed by the Uniform Customs and Practice for Documentary Credits (1993 Revision),

International Chamber of Commerce Brochure No. 500 or as otherwise required by the Issuer of the LOC.

1.6.4.4 Customer shall provide Guarantor's annual audited financial statements to Transmission Owner within one hundred twenty (120) days after the end of each calendar year. Transmission Owner shall have the right to monitor the financial condition of Customer, Guarantor, and the Issuer to the extent set forth herein, and Customer shall provide written Notice to Transmission Owner within five (5) Business Days of becoming aware that (i) the Issuer does not satisfy the requirements of the second sentence of Section 1.7.4.3, (ii) ALLETE, Inc. or an affiliate is the Guarantor, such entity does not, collectively, have a tangible net worth of at least Five Hundred Million Dollars (\$500,000,000), or (iii) if the Guarantor is not ALLETE, Inc. or an affiliate such Person does not have an Investment Grade Credit Rating, and in such event Customer shall provide alternative Security as soon as practicable that complies with this Section 1.7.4.4 and in no event later than thirty (30) Days after becoming aware of the Issuer's or a Guarantor's failure to meet the requirements of this Section 1.7.

1.6.5 Release of Security. Promptly following the termination of this FCA and the completion of all Customer's obligations under this FCA, Transmission Owner shall release the Security (including any accumulated interest, if applicable) to Customer.

1.6.6 Permitted Draws; Effects of Draws. In addition to any other remedy available to it, Transmission Owner may, before or after termination of this FCA, draw against the Security to satisfy any undisputed obligations of Customer to Transmission Owner arising under this Agreement (including, without limitation, the payment of Availability Liquidated Damages, if any, or any indemnification obligations) which Customer has not otherwise paid or performed when due, after any required Notice and opportunity to cure. If Transmission Owner draws against the Security and Customer subsequently disputes Transmission Owner's entitlement to any portion of the funds drawn, neither Transmission Owner's draw, the Issuer's payment under the LOC, nor Customer's replenishment of the Security or reimbursement of the Issuer or escrow agent shall constitute a waiver of Customer's rights to seek recovery of any amount disputed. To the extent Transmission Owner elects to draw upon the Security to satisfy obligations that otherwise constitute, or might constitute, an Event of Default by Customer and entitle Transmission Owner to terminate this Agreement, Transmission Owner's draw against the Security shall be deemed a cure of such Event of Default and shall waive Transmission Owner's right to terminate in that respect. With respect to any Event of Default by Seller that remains uncured and which could be cured by payment of an undisputed amount to Transmission Owner, Transmission Owner shall first draw upon the Security to cure the Event of Default, and only if such Security is insufficient to cure the Event of Default shall any right of termination

which Transmission Owner may otherwise have be exercised by Transmission Owner.

1.6.7 Reduction in Security. Transmission Owner may, by Notice from time to time to Customer, waive or reduce the amount of security required to be posted hereunder in consideration of an Affiliate of Transmission Owner having a minority ownership interest in Customer.

1.7 **Permits, Licenses and Authorizations.**
Transmission Owner will be responsible for all permits, licenses and authorizations.

Facilities Construction Agreement
APPENDIX B
NOTIFICATION OF COMPLETED CONSTRUCTION

This Appendix B is a part of the Facilities Construction Agreement among Customer, Transmission Owner, and Transmission Provider. Where applicable, when Transmission Owner has completed construction of the Transmission Owner ~~Interconnection Facilities~~ ~~Connection Facilities~~, Network Upgrades and/or ~~System Protection~~ Direct Assignment Facilities, Transmission Owner shall send notice to Customer and Transmission Provider, in substantially the form following:

[Date]

MISO

Attn: Director, ~~Transmission Access Planning~~ Resource Utilization
720 City Center Drive
Carmel, IN 46032

Customer Address

Phone:

Fax:

Email:

Re: Completion of Network Upgrade/~~System Protection~~ Direct Assignment Facilities

Dear [Name or Title]:

This letter is sent pursuant to the Facilities Construction Agreement among [Transmission Owner], [Customer], and MISO, dated _____, 20__.

On [Date], Transmission Owner completed to its satisfaction all work on the Network Upgrades and/or System Protection Facilities required to facilitate the safe and reliable ~~interconnection and~~ operation of Customer's Facility. Transmission Owner confirms that the Network Upgrade and/or System Protection Facilities are in place.

Thank you.

[Signature]

[Transmission Owner Representative]

Facilities Construction Agreement

APPENDIX C Exhibits

This Appendix C is a part of the Facilities Construction Agreement among Customers,
Transmission Owner, and Transmission Provider.

Exhibit C1.

Transmission Owner ~~Site Map~~ Network Upgrade One Line

CUI//CEII MATERIAL – DO NOT RELEASE

CUI//CEII MATERIAL – DO NOT RELEASE

Exhibit C2.
Site Plan

Exhibit C3
Transmission Line and/or Substation Network Upgrades and System Protection Facilities
Plan & Profile

Exhibit C4
Estimated Cost of Transmission line and/or Substation Network Upgrades and System
Protection Direct Assignment Facilities

The total estimated cost for the Network Upgrades for HVDC Converter Station, connections to AC System, Transmission Line Modifications is \$878,000,000.

The details of the cost assigned for customer with Transmission Service Requests #90481026 & #95418167 is shown below in Table 1, Table 2, Table 3.

Detailed Cost Estimate of Facilities to be Constructed by Transmission Owner

The anticipated costs of modernizing and upgrading the HVDC converter stations are shown in Table 1. The initial estimated converter station replacement base cost was provided by the HVDC OEM. If design assumptions change significantly during the development of the project, the base cost shown in Table 1 may change.

Table 1: Converter Station Replacement Cost Breakdown

<u>HVDC 900 MW Upgrade</u>		<u>Location</u> <u>Estimated Cost</u>	<u>Facilities Cost Assigned to be Constructed by Transmission Owner Service Requests #90481026 & #95418167</u>	<u>Estimate in Dollars</u>
<u>Converter Station Base Cost</u>		<u>\$705,000,000</u>	<u>\$165,000,000</u>	
<u>Internal & Professional Services</u>		<u>(Included)</u>	<u>(Included)</u>	
<u>Contingency - Converter Station</u>		<u>(Included)</u>	<u>(Included)</u>	
<u>AFUDC - Converter Station</u>		<u>(Included)</u>	<u>(Included)</u>	
	<u>Total:</u> <u>(in</u>	<u>\$705,000,000</u>	<u>\$165,000,000</u>	

		<u>2022</u> <u>dollars)</u>		
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The anticipated costs of AC Interconnection Facilities necessary to connect the relocated VSC HVDC converter stations to the existing AC transmission system are shown in Table 2. If design assumptions change significantly during the development of the project, the base costs shown in Table 2 may change.

Table 2: AC Interconnection Facilities Cost Breakdown

<u>HVDC 900 MW Upgrade</u>	<u>Estimated Cost</u>	<u>Cost Assigned to Transmission Service Requests #90481026 & #95418167</u>
<u>Minnesota AC Interconnections</u>	<u>\$55,000,000</u>	<u>\$7,000,000</u>
<u>North Dakota AC Interconnections</u>	<u>\$40,000,000</u>	<u>\$4,000,000</u>
<u>Nelson Lake 230 kV Substation</u>	<u>\$20,000,000</u>	<u>\$4,000,000</u>
<u>Total (in 2022dollars)</u>	<u>\$115,000,000</u>	<u>\$15,000,000</u>

The anticipated costs of Transmission Line Modifications are shown in Table 3. The upgrade cost estimate is based on preliminary transmission structural engineering evaluations. If additional HVDC transmission line modifications or scope changes are found to be necessary during the development of the project, the costs presented in Table 3 may be impacted.

Table 3: Transmission Line Modifications Cost Breakdown

<u>HVDC 900 MW Upgrade</u>	<u>Estimated Cost</u>	<u>Cost Assigned to Transmission Service Requests #90481026 & #95418167</u>
<u>HVDC T-Line 900 MW Upgrade</u>	<u>\$58,000,000</u>	<u>\$25,000,000</u>
<u>HVDC T-Line AFUDC</u>	<u>(Included)</u>	<u>(Included)</u>
<u>HVDC T-Line Contingency</u>	<u>(Included)</u>	<u>(Included)</u>
<u>Total (in 2022dollars)</u>	<u>\$58,000,000</u>	<u>\$25,000,000</u>

TAB C

PUBLIC

SA 4209 MINNESOTA POWER-MINNESOTA POWER FCA VERSION 31.0.0

EFFECTIVE 2/28/2024

ORIGINAL SERVICE AGREEMENT NO. 4209

PUBLIC VERSION

FACILITIES CONSTRUCTION AGREEMENT

entered into by the

Midcontinent Independent System Operator, Inc.,

And

Minnesota Power, a division of ALLETE, INC.

And

Minnesota Power, a division of ALLETE, INC.

For

Square Butte TSR 91365462

FACILITIES CONSTRUCTION AGREEMENT

entered into by the

Midcontinent Independent System Operator, Inc.,

And

Minnesota Power, a division of ALLETE, INC.

And

Minnesota Power, a division of ALLETE, INC.

entered into on the 28th day of February, 2024

FACILITIES CONSTRUCTION AGREEMENT

THIS FACILITIES CONSTRUCTION AGREEMENT (sometimes hereinafter referred to as “Agreement”) is made and entered into this 28th day of February, 2024, by and among the merchant function of **Minnesota Power**, a division of **ALLETE, INC.**, a corporation, organized and existing under the laws , of the State of Minnesota (“Customer”), the **Midcontinent Independent System Operator, Inc.**, a non-profit, non-stock corporation organized and existing under the laws of the State of Delaware (“Transmission Provider”) and the transmission function of **Minnesota Power**, a division of **ALLETE, INC.**, a corporation organized under the laws of the State of Minnesota (“Transmission Owner”). Customer, Transmission Owner, or Transmission Provider each may be referred to as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, Transmission Owner each owns electric facilities and is engaged in generation, transmission, distribution and/or sale of electric power and energy; and

WHEREAS, Transmission Provider has functional control of the operations of the Transmission System, as defined herein, and is responsible for providing transmission and interconnection service on the transmission facilities under its control; and

WHEREAS, Customer intends to reserve firm point to point Transmission Service via Transmission Provider’s Reservation Request No 91365462; and

WHEREAS, the Transmission System is affected by the firm transmission service request of the Facility and additions, modifications and upgrades must be made to certain existing facilities of the Transmission System to accommodate such transmission service; and

WHEREAS, Customer has requested, and Transmission Provider and Transmission Owner have agreed, to enter into this Agreement with Customer for the purpose of facilitating the transmission service of the Facility by the construction of necessary Network Upgrades to the Transmission System;

NOW, THEREFORE, in consideration of and subject to the mutual covenants contained herein, it is agreed:

ARTICLE 1 DEFINITIONS

Wherever used in this Agreement with initial capitalization, the following terms shall have the meanings specified or referred to in this Article 1. Terms used in this Agreement with initial capitalization not defined in this Article 1 shall have the meanings specified in the Tariff:

- 1.1** “Applicable Laws and Regulations” shall mean all duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority having jurisdiction over the Parties, their respective facilities and/or the respective services they provide.
- 1.2** “Applicable Reliability Council” shall mean the reliability council of NERC applicable to the Local Balancing Authority of the Transmission System to which the Facility is directly interconnected.
- 1.3** “Applicable Reliability Standards” shall mean Reliability Standards approved by the Federal Energy Regulatory Commission (FERC) under Section 215 of the Federal Power Act, as applicable.
- 1.4** “Breach” shall mean the failure of a Party to perform or observe any material term or condition of this Agreement and shall include, but not be limited to, the events described in Article 9.1.
- 1.5** “Breaching Party” shall mean a Party that is in Breach of this Agreement.
- 1.6** “Confidential Information” shall mean any proprietary or commercially or competitively sensitive information, trade secret or information regarding a plan, specification, pattern, procedure, design, device, list, concept, policy or compilation relating to the present or planned business of a Party, or any other information as specified in Article 12, which is designated as confidential by the Party supplying the information, whether conveyed orally, electronically, in writing, through inspection, or otherwise, that is received by another Party.
- 1.7** “Customer” shall mean, for purposes of this Agreement, a Transmission Customer as defined in the Tariff.
- 1.8** “Default” shall mean the failure of a Breaching Party to cure its Breach in accordance with Article 9 of this Agreement.
- 1.9** “Direct Assignment Facilities” shall mean those facilities or portions of facilities that are constructed by any Transmission Owner(s), ITC, or ITC Participant(s) for the sole use/benefit of a particular Transmission Customer requesting service under this Tariff. Direct Assignment Facilities shall be specified in the Service Agreement that governs service to the Transmission Customer and shall be subject to Commission approval.

- 1.10** “Effective Date” shall mean the date on which this Agreement becomes effective upon execution by the Parties subject to acceptance by the Commission, or if filed unexecuted, upon the date specified by the Commission.
- 1.11** “FERC” shall mean the Federal Energy Regulatory Commission, also known as Commission, or its successor.
- 1.12** “Force Majeure” shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party’s control. A Force Majeure event does not include an act of negligence or intentional wrongdoing by the Party claiming Force Majeure.
- 1.13** “Good Utility Practice” shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known to the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.
- 1.14** “Governmental Authority” shall mean any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided, however, that such term does not include Customer, Transmission Provider, Transmission Owner, or any Affiliate thereof.
- 1.15** “In-Service Date” shall mean the date upon which Customer reasonably expects it will be ready to begin use of the Network Upgrades and/or Direct Assignment Facilities.
- 1.16** “Local Balancing Authority” shall mean an operational entity or a Joint Registration Organization which is (i) responsible for compliance with the subset of NERC Balancing Authority Reliability Standards defined in the Balancing Authority Agreement for their local area within the MISO Balancing Authority Area, (ii) a Party to Balancing Authority Agreement, excluding MISO, and (iii) shown in Appendix A to the Balancing Authority Agreement.
- 1.17** “Loss” shall mean any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or

to third parties, arising out of or resulting from the other Party's performance, or non-performance of its obligations under this Agreement on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing, by the indemnified Party.

- 1.18** "Material Modification" shall mean: (1) modification to a Transmission Service Request in the queue that has a material adverse impact on the cost or timing or constraint identification of Transmission Service Request; or (2) planned modification to proposed network upgrades that is undergoing evaluation and has a material adverse impact on the Transmission System prior to the modification.
- 1.19** "NERC" shall mean the North American Electric Reliability Corporation, or its successor organization.
- 1.20** "Network Upgrades" shall mean the additions, modifications, and upgrades to the Transmission System required to accommodate the transmission service requests.
- 1.21** "Non-Breaching Party" shall mean a Party that is not in Breach of this Agreement with regard to a specific event of Breach by another Party.
- 1.22** "Reasonable Efforts" shall mean, with respect to an action required to be attempted or taken by a Party under this Agreement, efforts that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.

Direct Assignment Facilities

- 1.23** "Tariff" shall mean the Transmission Provider's Tariff through which open access transmission service and Interconnection Service are offered, as filed with the Commission, and as amended or supplemented from time to time, or any successor tariff.
- 1.24** "Transmission Service" shall mean Point-to-Point Transmission Service provided under Module B of the Tariff on a firm and non-firm basis and the Network Integration Transmission Service under Module B of the Tariff.
- 1.25** "Transmission System" shall mean the facilities owned by Transmission Owner and controlled or operated by Transmission Provider or Transmission Owner that are used to provide Transmission Service or Wholesale Distribution Service under the Tariff.

ARTICLE 2 TERM OF AGREEMENT

- 2.1 Effective Date.** Subject to required regulatory authorizations, including, without limitation, acceptance by FERC under Section 205 of the Federal Power Act, this Agreement shall become effective on the date on which this Agreement is made and entered into by the Parties.
- 2.2 Term.**

- 2.2.1 General.** This Agreement shall become effective as provided in Article 2.1 and shall continue in full force and effect until the earlier of (i) the final repayment, where applicable, by Transmission Owner of the amount funded by Customer for Transmission Owner's design, procurement, construction and installation of the Network Upgrades and Direct Assignment Facilities provided in Appendix A; (ii) the Parties agree to mutually terminate this Agreement; (iii) earlier termination is permitted or provided for under Appendix A of this Agreement; or (iv) Customer terminates this Agreement after providing Transmission Provider and Transmission Owner with written notice at least sixty (60) Calendar Days prior to the proposed termination date, provided that Customer has no outstanding contractual obligations to Transmission Provider or Transmission Owner under this Agreement. No termination of this Agreement shall be effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination. The term of this Agreement may be adjusted upon mutual agreement of the Parties, if the In-Service Date for the Network Upgrades and Direct Assignment Facilities is adjusted in accordance with the rules and procedures established by Transmission Provider.
- 2.2.2 Termination Upon Default.** In the event of a Default by a Party, the Non-Breaching Party or Parties shall have the termination rights described in Articles 9 and 10; provided, however, if an event described in part (c) of Article 9.1 has not occurred, and provided the Default does not pose a threat to the reliability of the Transmission System, neither Transmission Provider nor Transmission Owner may terminate this Agreement if Customer is the Breaching Party and Customer (i) has undertaken, in accordance with Article 9.2, to cure the Breach that led to the Default and has failed to cure the Breach for reasons other than Customer's failure to diligently commence reasonable and appropriate steps to cure the Breach within the thirty (30) Calendar Days allowed by Article 9.2, and (ii) compensates Transmission Provider or Transmission Owner within thirty (30) Calendar Days for the amount of damage billed to Customer by Transmission Provider or Transmission Owner for any damages, including costs and expenses, incurred by Transmission Provider or Transmission Owner as a result of such Default. In the event of an occurrence described in part (c) of Article 9.1, and providing the Default does not pose a threat to the reliability of the Transmission System, the Non-Breaching Party or Parties shall not terminate this Agreement provided that the Breaching Party provided an assurance of payment acceptable to the Non-Breaching Party, and pays any applicable damages.
- 2.2.3 Consequences of Termination.** In the event of a termination by any Party, other than a termination by Customer due to a Breach by Transmission Owner, Customer must pay Transmission Owner all amounts still due and payable for construction and installation of the Network Upgrades and Direct Assignment Facilities (including, without limitation, any equipment ordered related to such construction), plus all out-of-pocket expenses incurred by Transmission Owner in connection with the construction and installation of the Network Upgrades and

Direct Assignment Facilities, through the date of termination, plus any actual costs which Transmission Owner (A) reasonably incurs in winding up work and construction demobilization and (B) reasonably incurs to ensure the safety of persons and property and the integrity and safe and reliable operation of the Transmission System. Transmission Owner agrees to use Reasonable Efforts to minimize such costs.

2.2.4 Material Adverse Change. In the event of a material change in law or regulation that adversely affects, or may reasonably be expected to adversely affect a Party's rights and/or obligations under this Agreement, the Parties shall negotiate in good faith any amendments to this Agreement necessary to adapt the terms of this Agreement to such change in law or regulation, and Transmission Provider shall file such amendments with FERC. If, within sixty (60) Calendar Days after the occurrence of any event described in this Article 2.2.4, the Parties are unable to reach agreement as to any necessary amendments, the Parties may proceed under Article 14 to resolve any disputes related thereto; Transmission Provider and/or Transmission Owner shall have the right to make a unilateral filing with FERC to modify this Agreement pursuant to Section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder, and Customer shall have the right to make a unilateral filing with FERC to modify this Agreement pursuant to Section 206 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder; provided that a Party shall have the right to protest any such filing by another Party and to participate fully in any proceeding before FERC in which such modifications may be considered. If a Party is unable to fully perform this Agreement due to the occurrence of an event described in this Article 2.2.4 and such inability is not based on economic reasons, such Party shall not be deemed to be in Default of its obligations under this Agreement, provided that such Party is seeking dispute resolution under Article 14 or before FERC, to the extent that (i) such Party is unable to perform as a result of such an event and (ii) such Party acts in accordance with its obligations under this Article 2.2.4.

2.3 Regulatory Filing. In accordance with Applicable Laws and Regulations, Transmission Provider shall file this Agreement, and any amendment to this Agreement with FERC as a service agreement under the Tariff. If Customer has executed this Agreement or any amendment to this Agreement, Customer shall not protest this Agreement or the amendment, shall reasonably cooperate with Transmission Provider with respect to such filing and shall provide any information, including the rendering of testimony or pleadings, as applicable, reasonably requested by Transmission Provider to the extent reasonably needed to comply with applicable regulatory requirements.

2.4 Survival. The applicable provisions of this Agreement shall continue in effect after expiration, cancellation, or termination hereof to the extent necessary to provide for final billings, billing adjustments, and the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect.

- 2.5 Termination Obligations.** Upon any termination pursuant to this Agreement, Customer shall be responsible for the payment of all costs or other contractual obligations incurred prior to the termination date including previously incurred capital costs, penalties for early termination, costs of removal and site restoration.

ARTICLE 3

CONSTRUCTION OF NETWORK UPGRADES AND DIRECT ASSIGNMENT FACILITIES

3.1 Construction.

- 3.1.1 Transmission Owner Obligations.** Transmission Owner shall (or shall cause such action to) design, procure, construct and install, and Customer shall pay, consistent with Article 3.2, the cost of, all Network Upgrades and Direct Assignment Facilities identified in Appendix A. All Network Upgrades and Direct Assignment Facilities designed, procured, constructed and installed by Transmission Owner pursuant to this Agreement shall satisfy all requirements of applicable safety and/or engineering codes, including those requirements of Transmission Owner and Transmission Provider, and comply with Good Utility Practice, and further, shall satisfy all Applicable Laws and Regulations.

3.1.2 Suspension of Work.

- 3.1.2.1 Right to Suspend for Force Majeure Event.** Provided that such suspension is permissible under the authorizations, permits or approvals granted for the construction of the Network Upgrades and Direct Assignment Facilities Customer will not suspend unless a Force Majeure event occurs. Customer must provide written notice of its request for suspension to Transmission Provider and Transmission Owner, and provide a description of the Force Majeure event that is acceptable to Transmission Provider. Suspension will only apply to Customer milestones and Interconnection Facilities described in the Appendices of this Agreement. Prior to suspension, Customer must also provide security acceptable to Transmission Owner, equivalent to the higher of \$5 million or the total cost of all Network Upgrades, Transmission Owner's Direct Assignment Facilities, and Distribution Upgrades listed in Appendix A of this Agreement. Network Upgrades, Direct Assignment Facilities will be constructed on the schedule described in the Appendices of this Agreement unless: (1) construction is prevented by the order of a Governmental Authority; (2) the Network Upgrades and Direct Assignment Facilities are not needed by any other project; or (3) Transmission Owner or Transmission Provider determines that a Force Majeure event prevents construction. In the event of (1), (2), or (3) security shall be released upon the determination that the Network

Upgrades and Direct Assignment Facilities will no longer be constructed. If suspension occurs, Customer shall be responsible for the costs which Transmission Owner incurs (i) in accordance with this Agreement prior to the suspension, (ii) in suspending such work, including any costs incurred to perform such work as may be necessary to ensure the safety of persons and property and the integrity of the Transmission System and, if applicable, any costs incurred in connection with the cancellation of contracts and orders for material which Transmission Owner cannot reasonably avoid, and (iii) reasonably incurs in winding up work and construction demobilization; provided, however, that, prior to canceling any such contracts or orders, Transmission Owner shall obtain Customer's authorization. Customer shall be responsible for all costs incurred in connection with Customer's denial of authorization to cancel such contracts or orders. Interest as provided in

Article 3.2.2.2 on amounts paid by Customer to Transmission Owner for the design, procurement, construction and installation of the Network Upgrades and Direct Assignment Facilities, shall not accrue during periods in which Customer has suspended construction under this Article 3.1.2. Transmission Owner shall invoice Customer pursuant to Article 6 and use Reasonable Efforts to minimize its costs. In the event that Customer suspends work pursuant to this Article, no construction duration, timelines and schedules set forth in Appendix A shall be suspended during the period of suspension unless ordered by a Governmental Authority, with such order being the Force Majeure event causing the suspension.

3.1.2.2 Recommencing of Work. If Customer requests Transmission Owner to recommence such work, Transmission Owner shall have no obligation to afford such work the priority it would have had but for the prior actions of Customer to suspend the work. In such event, Customer shall be responsible for any costs incurred in recommencing the work. All recommenced work shall be completed pursuant to an amended schedule for the transmission service agreed to by the Parties. Transmission Provider and Transmission Owner have the right to request a System Impact Study if conditions have materially changed subsequent to the request to suspend. Customer shall be responsible for the costs of any studies required.

3.1.2.3 Termination in the Event of a Material Modification. In the event Customer suspends the performance of work by Transmission Owner pursuant to this Article 3.1.2 and modifies its In-Service Date, this Agreement shall be deemed terminated unless Customer demonstrates that the change is not a Material Modification under FERC precedent.

3.1.2.4 Right to Suspend Due to Default. Transmission Owner reserves the right, upon written notice to Customer, to suspend, at any time, work by Transmission Owner and the incurrence of additional expenses associated with the construction and installation of the Network Upgrades and Direct Assignment Facilities upon the occurrence of either a Breach that Customer is unable to cure pursuant to Article 9 or an Event of Default pursuant to Article 9. Any form of suspension by Transmission Owner shall not be barred by Articles 2.2.2, 2.2.3 or 9.2.2, nor shall it affect Transmission Owner's right to terminate the work or this Agreement pursuant to Article 10. In such events, Customer shall be responsible for costs which Transmission Owner incurs as set forth in Article 2.2.3.

3.1.3 Construction Status. Transmission Owner shall keep Customer and Transmission Provider advised periodically as to the progress of its respective design, procurement and construction efforts as described in Appendix A. Customer may, at any time, request a progress report from Transmission Owner, with a copy to be provided to Transmission Provider. If, at any time, Customer determines that the completion of the Network Upgrades and Direct Assignment Facilities will not be required until after the specified In-Service Date, Customer will provide written notice to Transmission Owner and Transmission Provider of such later date upon which the completion of the Network Upgrades and Direct Assignment Facilities would be required. Transmission Owner may delay the In-Service Date of the Network Upgrades accordingly.

3.1.4 Timely Completion. Transmission Owner shall use Reasonable Efforts to design, procure, construct, install, and test the Network Upgrades and Direct Assignment Facilities in accordance with the schedule set forth in Appendix A, which schedule may be revised from time to time by mutual agreement of the Parties. If any event occurs that will affect the time for completion of the Network Upgrades and Direct Assignment Facilities, or the ability to complete any of them, Transmission Owner and/or Transmission Provider shall promptly notify Customer, with a copy to the other Party. In such circumstances, Transmission Provider shall, within fifteen (15) Calendar Days of such notice, convene a technical meeting with Customer and Transmission Owner to evaluate the alternatives available to Customer. Transmission Owner and/or Transmission Provider shall also make available to Customer all studies and work papers related to the event and corresponding delay, including all information that is in the possession of Transmission Provider or Transmission Owner that is reasonably needed by Customer to evaluate alternatives. Transmission Owner shall, at Customer's request and expense, use Reasonable Efforts to accelerate its work under this Agreement to meet the schedule set forth in Appendix A, provided that Customer authorizes such actions and the costs associated therewith in advance.

3.2 Network Upgrade Costs and Credits.

- 3.2.1 Costs.** Customer shall pay to Transmission Owner costs (including taxes and financing costs) associated with seeking and obtaining all necessary approvals and of designing, engineering, constructing, and testing the Network Upgrades and Direct Assignment Facilities, as identified in Appendix A, in accordance with the cost recovery method provided herein;

Customer shall pay for Direct Assignment Facilities and Network Upgrades in accordance with Attachment N of the Tariff. The cost assignment provisions shall apply to facilities constructed by Transmission Owner until such time as Transmission Owner is able to fully recover its revenue requirements as calculated in Attachment N, Section C. If the Transmission Service Request is discontinued or suspended, the Transmission Customer shall pay the Transmission Owner for the remaining applicable amounts that must be paid pursuant to Attachment N of the Tariff.

Transmission Owner shall install, at Customer's expense, any Transmission Owner's Direct Assignment Facilities that may be required on the Transmission Owner's Interconnection Facilities or the Transmission Owner's transmission or distribution facilities as a result of the Network Upgrades required by Customer's request.

- 3.2.1.1 Lands of Other Property Owners.** If any part of the Transmission Owner's Network Upgrades, Direct Assignment Facilities, and/or Distribution Upgrades is to be installed on property owned by persons other than Customer or Transmission Owner, Transmission Owner shall at Customer's expense use efforts, similar in nature and extent to those that it typically undertakes on its own behalf or on behalf of its Affiliates, including use of its eminent domain authority to the extent permitted and consistent with Applicable Laws and Regulations and, to the extent consistent with such Applicable Laws and Regulations, to procure from such persons any rights of use, licenses, rights of way and easements that are necessary to construct, operate, maintain, test, inspect, replace or remove the Transmission Owner's Interconnection Facilities, Network Upgrades, Direct Assignment Facilities, and/or Distribution Upgrades upon such property.

- 3.2.2 Credits.**

- 3.2.2.1 Repayment.** Customer shall be entitled to a cash repayment by Transmission Owner(s) that owns the Network Upgrades, of the amount paid respectively to Transmission Owner, if any, for the Network Upgrades, as provided under the Tariff, and including any tax gross-up or other tax-related payments associated with the repayable portion of the Network Upgrades, and not repaid to Customer pursuant to Article 3.3.1 or otherwise, to be paid to Customer on a dollar-for-dollar basis for the

non-usage sensitive portion of transmission charges, as payments are made under the Tariff for Transmission Service with respect to the Facility. Any repayment shall include interest calculated in accordance with the methodology set forth in FERC's regulations at 18 C.F.R. § 35.19 a(a)(2)(iii) from the date of any payment for Network Upgrades through the date on which Customer receives a repayment of such payment pursuant to this subparagraph. Interest shall not accrue during periods in which Customer has suspended construction pursuant to Article 3.1.2.1 or the Network Upgrades have been determined not to be needed pursuant to this Article 3.2.2.1. Customer may assign such repayment rights to any person.

3.2.2.2 Amount. Transmission credits will be based on the final, actual cost of completing the Network Upgrades as provided by the final invoice prepared by Transmission Owner pursuant to Article 6.4 of this Agreement. Any repayment made pursuant to Article 3.2.2.1 shall include (i) the final, actual cost after any true-up amounts have been paid pursuant to Article 6.4, and (ii) interest calculated in accordance with the methodology set forth in FERC's regulations at 18 C.F.R. §35.19a(a)(2)(iii) from the date of any payment for Network Upgrades through the date on which Customer receives a repayment of such payment pursuant to this Article 3.2 until fully reimbursed. Interest shall not accrue during periods in which Customer has suspended construction pursuant to Article 3.1.2.1.

3.2.2.3 Alternative Payment Schedule. Notwithstanding the foregoing, as applicable and consistent with the Tariff, Customer, Transmission Provider, and Transmission Owner, may adopt any alternative payment schedule that is mutually agreeable.

3.2.2.4 RESERVED

3.2.2.5 Rights not Relinquished. Notwithstanding any other provision of this Agreement, nothing herein shall be construed as relinquishing or foreclosing any rights, including but not limited to firm transmission rights, capacity rights, transmission congestion rights, or transmission credits, that Customer, shall be entitled to, now or in the future under any other agreement or tariff as a result of, or otherwise associated with, the transmission capacity, if any, created by the Network Upgrades, including the right to obtain refunds or transmission credits for Transmission Service that is not associated with the Facility.

3.3 Taxes.

3.3.1 Indemnification for Contributions in Aid of Construction. The Parties intend that all payments made by Customer to Transmission Owner for the installation of the Network Upgrades and Direct Assignment Facilities shall be non-taxable contributions to capital in accordance with the Internal Revenue Code and any applicable state tax laws and shall not be taxable as contributions in aid of construction under the Internal Revenue Code and any applicable state tax laws. With regard only to such contributions, Transmission Owner shall not include a gross-up for income taxes in the amounts it charges Customer for the installation of the Network Upgrades and Direct Assignment Facilities unless (i) Transmission Owner has determined, in good faith, that the payments or property transfers made by Customer to Transmission Owner should be reported as income subject to taxation or (ii) any Governmental Authority directs Transmission Owner to report payments or property as income subject to taxation; provided, however, that Transmission Owner may require Customer to provide security for Network Upgrades, in a form reasonably acceptable to Transmission Owner (such as a parental guarantee or a letter of credit), in an amount equal to the cost consequences or any current tax liability under this Article. Customer shall reimburse Transmission Owner for such costs on a fully grossed-up basis, in accordance with this Article, within thirty (30) Calendar Days of receiving written notification from Transmission Owner of the amount due, including detail about how the amount was calculated.

The indemnification obligation shall terminate at the earlier of (1) the expiration of the ten-year testing period and the applicable statute of limitation, as it may be extended by Transmission Owner upon request of the IRS, to keep these years open for audit or adjustment, or (2) the occurrence of a subsequent taxable event and the payment of any related indemnification obligations as contemplated by this Article. Notwithstanding the foregoing provisions of this Article 3.3.1, and to the extent permitted by law, to the extent that the receipt of such payments by Transmission Owner is determined by any Governmental Authority to constitute income by Transmission Owner subject to taxation, Customer shall protect, indemnify and hold harmless Transmission Owner and its Affiliates, from all claims by any such Governmental Authority for any tax, interest and/or penalties associated with such determination. Upon receiving written notification of such determination from the Governmental Authority, Transmission Owner shall provide Customer with written notification within thirty (30) Calendar Days of such determination and notification. Transmission Owner, upon the timely written request by Customer and at Customer's expense, shall appeal, protest, seek abatement of, or otherwise oppose such determination. Transmission Owner reserves the right to make all decisions with regard to the prosecution of such appeal, protest, abatement or other contest, including the compromise or settlement of the claim; provided that Transmission Owner shall cooperate and consult in good faith with Customer regarding the conduct of such contest. Customer shall advance to Transmission Owner on a periodic basis as requested by Transmission Owner the estimated cost of prosecuting such appeal, protest, abatement or other contest. Customer shall not be required to pay Transmission

Owner for the tax, interest and/or penalties prior to the seventh (7th) Calendar Day before the date on which Transmission Owner (i) is required to pay the tax, interest and/or penalties or other amount in lieu thereof pursuant to a compromise or settlement of the appeal, protest, abatement or other contest; (ii) is required to pay the tax, interest and/or penalties as the result of a final, non-appealable order by a Governmental Authority; or (iii) is required to pay the tax, interest and/or penalties as a prerequisite to an appeal, protest, abatement or other contest. In the event such appeal, protest, abatement or other contest results in a determination that Transmission Owner is not liable for any portion of any tax, interest and/or penalties for which Customer has already made payment to Transmission Owner, Transmission Owner shall promptly refund to Customer any payment attributable to the amount determined to be non-taxable, plus any interest or other payments Transmission Owner receives or which Transmission Owner may be entitled with respect to such payment. In accordance with Article 6, Customer shall provide Transmission Owner with credit assurances sufficient to meet Customer's estimated liability for reimbursement of Transmission Owner for taxes, interest and/or penalties under this Section 3.3.1. Such estimated liability shall be stated in Appendix A.

To the extent that Transmission Owner is a limited liability company and not a corporation, and has elected to be taxed as a partnership, then the following shall apply: Transmission Owner represents, and the Parties acknowledge, that Transmission Owner is a limited liability company and is treated as a partnership for federal income tax purposes. Any payment made by Customer to Transmission Owner for Network Upgrades and Direct Assignment Facilities is to be treated as an upfront payment in accordance with Rev Proc 2005-35. It is anticipated by the Parties that any amounts paid by Customer to Transmission Owner for Network Upgrades and Direct Assignment Facilities will be reimbursed to Customer in accordance with the terms of this Agreement, provided Customer fulfills its obligations under this Agreement.

3.3.2 Private Letter Ruling. At Customer's request and expense, Transmission Owner shall file with the IRS a request for a private letter ruling as to whether any property transferred or sums paid, or to be paid, by Customer to Transmission Owner under this Agreement are subject to federal income taxation. Customer will prepare the initial draft of the request for a private letter ruling, and will certify under penalties of perjury that all facts represented in such request are true and accurate to the best of Customer's knowledge. Transmission Owner and Customer shall cooperate in good faith with respect to the submission of such request.

3.3.3 Other Taxes. Upon the timely request by Customer, and at Customer's sole expense, Transmission Owner shall appeal, protest, seek abatement of, or otherwise contest any tax (other than federal or state income tax) asserted or assessed against Transmission Owner for which Customer may be required to reimburse Transmission Owner under the terms of this Agreement. Customer

shall pay to Transmission Owner on a periodic basis, as invoiced by Transmission Owner, Transmission Owner's documented reasonable costs of prosecuting such appeal, protest, abatement, or other contest. Customer and Transmission Owner shall cooperate in good faith with respect to any such contest. Unless the payment of such taxes is a prerequisite to an appeal or abatement or cannot be deferred, no amount shall be payable by Customer to Transmission Owner for such taxes until they are assessed by a final, non-appealable order by any court or agency of competent jurisdiction. In the event that a tax payment is withheld and ultimately due and payable after appeal, Customer will be responsible for all taxes, interest and penalties, other than penalties attributable to any delay caused by Transmission Owner. Each Party shall cooperate with the other Parties to maintain each Party's tax status. Nothing in this Agreement is intended to adversely affect any Party's tax-exempt status with respect to the issuance of bonds including, but not limited to, Local Furnishing Bonds.

ARTICLE 4 FORCE MAJEURE

- 4.1 Notice.** The Party unable to carry out an obligation imposed on it by this Agreement due to a Force Majeure event shall notify the other Parties in writing or verbally with subsequent notice in writing within a reasonable time after the occurrence of the cause relied on.
- 4.2 Duration of Force Majeure.** Except as set forth in Article 4.3, no Party will be considered in Default as to any obligation under this Agreement if prevented from fulfilling the obligation due to an event of Force Majeure. A Party shall not be responsible for any non-performance or be considered in Breach or Default under this Agreement due to Force Majeure. A Party shall be excused from whatever performance is affected for only the duration of the Force Majeure event and while the Party exercises Reasonable Efforts to alleviate such situation. As soon as the non-performing Party is able to resume performance of its obligations excused as a result of the occurrence of Force Majeure, such Party shall give prompt notice thereof to the other Parties.
- 4.3 Obligation to Make Payments.** Any Party's obligation to make payments for services incurred shall not be suspended by Force Majeure.

ARTICLE 5 INFORMATION REPORTING

- 5.1 Information Reporting Obligations.** Each Party shall, in accordance with Good Utility Practice, promptly provide to the other Parties all relevant information, documents, or data regarding the Party's facilities and equipment which may reasonably be expected to pertain to the reliability of the other Party's facilities and equipment and which has been reasonably requested by the other Party.

- 5.2 Non-Force Majeure Reporting.** A Party shall notify the other Parties when it becomes aware of its inability to comply with the provisions of this Agreement for a reason other than Force Majeure. The Parties agree to cooperate with each other and provide necessary information regarding such inability to comply, including, but not limited to, the date, duration, reason for the inability to comply, and corrective actions taken or planned to be taken with respect to such inability to comply. In the event of Force Majeure, a Party unable to comply with the provisions of this Agreement shall notify the other Parties in accordance with the provisions of Article 4.

ARTICLE 6

CREDITWORTHINESS, BILLING AND PAYMENTS

- 6.1 Creditworthiness.** By the earlier of (i) thirty (30) Calendar Days prior to the due date for Customer's first payment under the payment schedule specified in Appendix A or (ii) the first date specified in Appendix A for the ordering of equipment by Transmission Owner for installing the Network Upgrades and Direct Assignment Facilities, Customer shall provide Transmission Owner, at Transmission Owner's option, with a form of adequate assurance of creditworthiness reasonably acceptable to Transmission Owner. If the adequate assurance is a parental guarantee or surety bond, it must be made by an entity that meets the creditworthiness requirements of Transmission Owner, have terms and conditions reasonably acceptable to Transmission Owner and guarantee payment of the amount specified in the next paragraph of this Article 6.1. If the adequate assurance is a letter of credit, it must be issued by a bank reasonably acceptable to Transmission Owner, specify a reasonable expiration date and may provide that the maximum amount available to be drawn under the letter shall reduce on a monthly basis in accordance with the monthly payment schedule. The surety bond must be issued by an insurer reasonably acceptable to Transmission Owner, specify a reasonable expiration date and may provide that the maximum amount assured under the bond shall reduce on a monthly basis in accordance with the monthly payment schedule. After the Network Upgrades and Direct Assignment Facilities have been placed in service and until Customer fully compensates Transmission Owner for construction of the Network Upgrades and Direct Assignment Facilities, Customer shall, subject to the standards of this Article 6.1, maintain a parental guarantee, surety bond, letter of credit, or some other credit assurance sufficient to meet its monthly payment obligation under Article 3.2.1, as specified in the following paragraph. Customer's estimated liability under Article 3.2.1 is stated in Appendix A.

Customer shall maintain as of the first day of each month beginning on the due date for Customer's first payment under the payment schedule specified in Appendix A, and continuing through to the In-Service Date, a parental guarantee, surety bond or letter of credit in an amount sufficient to cover the applicable costs and cost commitments required of the Party responsible for building the facilities pursuant to the construction schedule developed in this Agreement for designing, engineering, seeking regulatory approval from any Governmental Authority, constructing, procuring and installing the facilities and shall be reduced on a dollar-for-dollar basis for payments made to Transmission Owner for these purposes as defined and established under Appendix A.

- 6.2 Invoice.** Each Party shall submit to the other Party, on a monthly basis, invoices of amounts due, if any, for the preceding month. Each invoice shall state the month to which the invoice applies and fully describe the services and equipment provided. The Parties may discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts a Party owes to the other Party under this Agreement, including interest payments or credits, shall be netted so that only the net amount remaining due shall be paid by the owing Party.
- 6.3 Payment.** Invoices shall be rendered to the paying Party at the address specified by the Parties. The Party receiving the invoice shall pay the invoice within thirty (30) Calendar Days of receipt. All payments shall be made in immediately available funds payable to the other Party, or by wire transfer to a bank named and account designated by the invoicing Party. Payment of invoices by a Party will not constitute a waiver of any rights or claims that Party may have under this Agreement.
- 6.4 Final Invoice.** Within six (6) months after completion of the construction of the Network Upgrades and Direct Assignment Facilities, Transmission Owner shall provide an invoice of the final cost of the construction of the Network Upgrades and Direct Assignment Facilities and shall set forth such costs in sufficient detail to enable Customer to compare the actual costs with the estimates and to ascertain deviations, if any, from the cost estimates. Transmission Owner shall refund, with interest (calculated in accordance with 18 C.F.R. Section 35.19a(a)(2)(iii)), to Customer any amount by which the actual payment by Customer for estimated costs exceeds the actual costs of construction within thirty (30) Calendar Days of the issuance of such final construction invoice.
- 6.5 Interest.** Interest on any unpaid amounts shall be calculated in accordance with 18 C.F.R. § 35.19a(a)(2)(iii).
- 6.6 Payment During Dispute.** In the event of a billing dispute among the Parties, Transmission Owner shall continue to construct the Network Upgrades and Direct Assignment Facilities under this Agreement as long as Customer: (i) continues to make all payments not in dispute; and (ii) pays to Transmission Provider or Transmission Owner or into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If Customer fails to meet these two requirements, then Transmission Provider may or, at Transmission Owner's request upon Customer's failure to pay Transmission Owner, shall provide notice to Customer of a Default pursuant to Article 9. Within thirty (30) Calendar Days after the resolution of the dispute, the Party that owes money to another Party shall pay the amount due with interest calculated in accord with the methodology set forth in 18 C.F.R. § 35.19a(a)(2)(iii).

ARTICLE 7 ASSIGNMENT

- 7.1 Assignment.** This Agreement may be assigned by any Party only with the written consent of the other Parties; provided that a Party may assign this Agreement without the

consent of the other Parties to any affiliate of the assigning Party with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this Agreement; and provided further that Customer shall have the right to assign this Agreement, without the consent of either Transmission Provider or Transmission Owner, for collateral security purposes to aid in providing financing for the Facility, provided that Customer will promptly notify Transmission Provider and Transmission Owner of any such assignment. Any financing arrangement entered into by Customer pursuant to this Article will provide that prior to or upon the exercise of the secured Party's, trustee's or assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify Transmission Provider and Transmission Owner of the date and particulars of any such exercise of assignment right(s), including providing Transmission Provider and Transmission Owner with proof that it meets the requirements of Article 6.1. Any attempted assignment that violates this Article is void and ineffective. Any assignment under this Agreement shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.

ARTICLE 8 INDEMNITY

8.1 General. To the extent permitted by law, a Party (the "Indemnifying Party") shall at all times indemnify, defend, and hold the other Parties (each an "Indemnified Party") harmless from Loss, only as provided in the Tariff.

8.1.1 Indemnified Party. If an Indemnified Party is entitled to indemnification under this Article 8 as a result of a claim by a third party, and the Indemnifying Party fails, after notice and reasonable opportunity to proceed under Article 8.1, to assume the defense of such claim, such Indemnified Party may at the expense of the Indemnifying Party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.

8.1.2 Indemnifying Party. If an Indemnifying Party is obligated to indemnify and hold any Indemnified Party harmless under this Article 8, the amount owing to the Indemnified Party shall be the amount of such Indemnified Party's actual Loss, net of any insurance or other recovery.

8.1.3 Indemnity Procedures. Promptly after receipt by an Indemnified Party of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in Article 8.1 may apply, the Indemnified Party shall notify the Indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a Party's indemnification obligation unless such failure or delay is materially prejudicial to the Indemnifying Party.

The Indemnifying Party shall have the right to assume the defense thereof with counsel designated by such Indemnifying Party and reasonably satisfactory to the Indemnified Party. If the defendants in any such action include one or more Indemnified Parties and the Indemnifying Party and if the Indemnified Party reasonably concludes that there may be legal defenses available to it and/or other Indemnified Parties which are different from or additional to those available to the Indemnifying Party, the Indemnified Party shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on its own behalf. In such instances, the Indemnifying Party shall only be required to pay the fees and expenses of one additional attorney to represent an Indemnified Party or Indemnified Parties having such differing or additional legal defenses.

The Indemnified Party shall be entitled, at its expense, to participate in any such action, suit or proceeding, the defense of which has been assumed by the Indemnifying Party. Notwithstanding the foregoing, the Indemnifying Party (i) shall not be entitled to assume and control the defense of any such action, suit or proceedings if and to the extent that, in the opinion of the Indemnified Party and its counsel, such action, suit or proceeding involves the potential imposition of criminal liability on the Indemnified Party, or there exists a conflict or adversity of interest between the Indemnified Party and the Indemnifying Party, in such event the Indemnifying Party shall pay the reasonable expenses of the Indemnified Party, and (ii) shall not settle or consent to the entry of any judgment in any action, suit or proceeding without the consent of the Indemnified Party, which shall not be reasonably withheld, conditioned or delayed.

- 8.2 Consequential Damages.** In no event shall any Party be liable to any other Party under any provision of this Agreement for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to another Party under another agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.

ARTICLE 9 BREACH, CURE AND DEFAULT

- 9.1 Events of Breach.** A Breach of this Agreement shall include:

- (a) The failure to pay any amount when due;
- (b) The failure to comply with any material term or condition of this Agreement, including but not limited to any material Breach of a representation, warranty or covenant made in this Agreement;

- (c) If a Party (i) is adjudicated bankrupt; (ii) files a voluntary petition in bankruptcy under any provision of any federal or state bankruptcy law or shall consent to the filing of any bankruptcy or reorganization petition against it under any similar law; (iii) makes a general assignment for the benefit of its creditors; or (iv) consents to the appointment of a receiver, trustee or liquidator;
- (d) Assignment of this Agreement in a manner inconsistent with the terms of this Agreement;
- (e) Failure of a Party to provide such access rights, or a Party's attempt to revoke access or terminate such access rights, as provided under this Agreement or any related agreements.
- (f) Failure of a Party to provide information or data to another Party as required under this Agreement, provided the Party entitled to the information or data under this Agreement requires such information or data to satisfy its obligations under this Agreement.

9.2 Notice of Breach, Cure and Default. Upon the occurrence of an event of Breach, the Party not in Breach, when it becomes aware of the Breach, shall give written notice of the Breach to the Breaching Party and to any other person representing a Party to this Agreement identified in writing to the other Party in advance. Such notice shall set forth, in reasonable detail, the nature of the Breach, and where known and applicable, the steps necessary to cure such Breach.

9.2.1 Upon the occurrence described in part (c) of Article 9.1, the Party experiencing such occurrence shall notify the other Party in writing within seven (7) Calendar Days after the commencement of such occurrence. Upon receiving written notice of the Breach hereunder, the Breaching Party shall have a period to cure such Breach (sometimes hereinafter referred as ("Cure Period") which shall be thirty (30) Calendar Days unless such Breach is due to an occurrence under Article 9.1(a) or (c) in which case the cure period will be five (5) Business Days.

9.2.2 If the Breach is such that it cannot be cured within the Cure Period, the Breaching Party will commence in good faith all steps as are reasonable and appropriate to cure the Breach within such Cure Period and thereafter diligently pursue such action to completion. In the event the Breaching Party fails to:

- (a) cure the Breach, or to commence reasonable and appropriate steps to cure the Breach, within the Cure Period; or,
- (b) completely cure the Breach within sixty (60) Calendar Days if the Breach occurs pursuant to Article 9.1(b), (d), (e) or (f),

the Breaching Party will be in Default of this Agreement and the non-Breaching Parties may, at their option, either in concert or individually, (1) act to terminate

this Agreement for cause by notifying the other Parties in writing, or (2) take whatever action at law or in equity as may appear necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreement, or covenants under this Agreement.

- 9.3 Rights in the Event of Default.** Notwithstanding the foregoing, upon the occurrence of an event of Default, any non-Defaulting Party shall be entitled to exercise all rights and remedies it may have in equity or at law.

ARTICLE 10

TERMINATION OF AGREEMENT

- 10.1 Expiration of Term.** Except as otherwise specified in this Article 10, the Parties' obligations under this Agreement shall terminate at the conclusion of the term of this Agreement.
- 10.2 Termination.** In addition to the termination provisions set forth in Article 2.2, a Party may terminate this Agreement upon the Default of another Party in accordance with this Agreement. Subject to the limitations set forth in Article 10.3, in the event of a Default, a non-Defaulting Party may terminate this Agreement only upon the later of (i) its giving of written notice of termination to the other Parties; and (ii) unless no longer required by FERC, the filing at FERC of a notice of termination for this Agreement, which filing must be accepted for filing by FERC.
- 10.3 Disposition of Facilities Upon Termination of Agreement.**
- 10.3.1 Transmission Provider and Transmission Owner Obligations.** Upon termination of this Agreement, unless otherwise agreed by the Parties in writing, Transmission Owner:
- (a) shall, prior to the construction and installation of any portion of the Network Upgrades and Direct Assignment Facilities and to the extent possible, cancel any pending orders of, or return, such equipment or material for such Network Upgrades and Direct Assignment Facilities;
 - (b) may keep in place any portion of the Network Upgrades and Direct Assignment Facilities already constructed and installed; and,
 - (c) shall perform such work as may be necessary to ensure the safety of persons and property and to preserve the integrity of the Transmission System (*e.g.*, construction demobilization to return the system to its original state, wind-up work).
- 10.3.2 Customer Obligations.** Upon billing by Transmission Owner, Customer shall reimburse Transmission Owner for any costs incurred by Transmission Owner in performance of the actions required or permitted by Article 10.3.1 and for the cost

of any Network Upgrades and Direct Assignment Facilities described in Appendix A. Transmission Owner and Transmission Provider shall use Reasonable Efforts to minimize costs and shall offset the amounts owed by any salvage value of facilities, if applicable. Customer shall pay these costs pursuant to Article 6.3 of this Agreement.

10.3.3 Pre-construction or Installation. Upon termination of this Agreement and prior to the construction and installation of any portion of the Network Upgrades and Direct Assignment Facilities, Transmission Owner may, at its option, retain any portion of such Network Upgrades and Direct Assignment Facilities not cancelled or returned in accordance with Article 10.3.1(a), in which case Transmission Owner shall be responsible for all costs associated with procuring such Network Upgrades and Direct Assignment Facilities. To the extent that Customer has already paid Transmission Owner for any or all of such costs, Transmission Owner shall transfer such amounts to the Customer. If Transmission Owner elects to not retain any portion of such facilities, Transmission Owner shall convey and make available to Customer such facilities as soon as practicable after Customer's payment for such facilities.

10.4 Survival of Rights. Termination or expiration of this Agreement shall not relieve any Party of any of its liabilities and obligations arising hereunder prior to the date termination becomes effective, and each Party may take whatever judicial or administrative actions as appear necessary or desirable to enforce its rights hereunder. The applicable provisions of this Agreement will continue in effect after expiration, or early termination hereof to the extent necessary to provide for (A) final billings, billing adjustments and other billing procedures set forth in this Agreement; (B) the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect; and (C) the confidentiality provisions set forth in Article 12.

ARTICLE 11 SUBCONTRACTORS

11.1 Subcontractors. Nothing in this Agreement shall prevent a Party from utilizing the services of subcontractors, as it deems appropriate, to perform its obligations under this Agreement; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services and each Party shall remain primarily liable to the other Parties for the performance of such subcontractor.

11.1.1 Responsibility of Principal. The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. In accordance with the provisions of this Agreement, each Party shall be fully responsible to the other Parties for the acts or omissions of any subcontractor it hires as if no subcontract had been made. Any applicable obligation imposed by

this Agreement upon a Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

11.1.2 No Third-Party Beneficiary. Except as may be specifically set forth to the contrary herein, no subcontractor or any other party is intended to be, nor will it be deemed to be, a third-party beneficiary of this Agreement.

11.1.3 No Limitation by Insurance. The obligations under this Article 11 will not be limited in any way by any limitation of any insurance policies or coverages, including any subcontractor's insurance.

ARTICLE 12 CONFIDENTIALITY

12.1 Confidentiality. Confidential Information shall include, without limitation, all information relating to a Party's technology, research and development, business affairs, and pricing, and any information supplied by a Party to another Party prior to the execution of this Agreement.

Information is Confidential Information only if it is clearly designated or marked in writing as confidential on the face of the document, or, if the information is conveyed orally or by inspection, if the Party providing the information orally informs the Party receiving the information that the information is confidential. The Parties shall maintain as confidential any information that is provided and identified by a Party as Critical Energy Infrastructure Information (CEII), as that term is defined in 18 C.F.R. Section 388.113(c).

Such confidentiality will be maintained in accordance with this Article 12. If requested by the receiving Party, the disclosing Party shall provide in writing, the basis for asserting that the information referred to in this Article warrants confidential treatment, and the requesting Party may disclose such writing to the appropriate Governmental Authority. Each Party shall be responsible for the costs associated with affording confidential treatment to its information.

12.1.1 Term. During the term of this Agreement, and for a period of three (3) years after the expiration or termination of this Agreement, except as otherwise provided in this Article 12 or with regard to CEII, each Party shall hold in confidence and shall not disclose to any person Confidential Information. CEII shall be treated in accordance with Commission policies and regulations.

12.1.2 Scope. Confidential Information shall not include information that the receiving Party can demonstrate: (1) is generally available to the public other than as a result of a disclosure by the receiving Party; (2) was in the lawful possession of the receiving Party on a non-confidential basis before receiving it from the disclosing Party; (3) was supplied to the receiving Party without restriction by a non-Party, who, to the knowledge of the receiving Party after due inquiry, was

under no obligation to the disclosing Party to keep such information confidential; (4) was independently developed by the receiving Party without reference to Confidential Information of the disclosing Party; (5) is, or becomes, publicly known, through no wrongful act or omission of the receiving Party or Breach of this Agreement; or (6) is required, in accordance with Article 12.1.7 of this Agreement, to be disclosed by any Governmental Authority or is otherwise required to be disclosed by law or subpoena, or is necessary in any legal proceeding establishing rights and obligations under this Agreement. Information designated as Confidential Information will no longer be deemed confidential if the Party that designated the information as confidential notifies the receiving Party that it no longer is confidential.

12.1.3 Release of Confidential Information. No Party shall release or disclose Confidential Information to any other person, except to its Affiliates (limited by the Standards of Conduct requirements), subcontractors, employees, agents, consultants, or to non-Parties who may be or are considering providing financing to or equity participation with Customer, or to potential purchasers or assignees of Customer, on a need-to-know basis in connection with this Agreement, unless such person has first been advised of the confidentiality provisions of this Article 12 and has agreed to comply with such provisions. Notwithstanding the foregoing, a Party providing Confidential Information to any person shall remain primarily responsible for any release of Confidential Information in contravention of this Article 12.

12.1.4 Rights. Each Party retains all rights, title, and interest in the Confidential Information that it discloses to the receiving Party. The disclosure by a Party to the receiving Party of Confidential Information shall not be deemed a waiver by the disclosing Party or any other person or entity of the right to protect the Confidential Information from public disclosure.

12.1.5 No Warranties. By providing Confidential Information, no Party makes any warranties or representations as to its accuracy or completeness. In addition, by supplying Confidential Information, no Party obligates itself to provide any particular information or Confidential Information to another Party nor to enter into any further agreements or proceed with any other relationship or joint venture.

12.1.6 Standard of Care. Each Party shall use at least the same standard of care to protect Confidential Information it receives as it uses to protect its own Confidential Information from unauthorized disclosure, publication or dissemination. Each Party may use Confidential Information solely to fulfill its obligations to another Party under this Agreement or its regulatory requirements.

12.1.7 Order of Disclosure. If a court or a Government Authority or entity with the right, power, and apparent authority to do so requests or requires any Party, by subpoena, oral deposition, interrogatories, requests for production of documents,

administrative order, or otherwise, to disclose Confidential Information, that Party shall provide the disclosing Party with prompt notice of such request(s) or requirement(s) so that the disclosing Party may seek an appropriate protective order or waive compliance with the terms of this Agreement. Notwithstanding the absence of a protective order or waiver, the Party may disclose such Confidential Information which, in the opinion of its counsel, the Party is legally compelled to disclose. Each Party will use Reasonable Efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished.

12.1.8 Termination of Agreement. Upon termination of this Agreement for any reason, each Party shall, within ten (10) Business Days of receipt of a written request from another Party, use Reasonable Efforts to destroy, erase, or delete (with such destruction, erasure, and deletion certified in writing to the requesting Party) or return to the requesting Party any and all written or electronic Confidential Information received from the requesting Party, except that each Party may keep one copy for archival purposes, provided that the obligation to treat it as Confidential Information in accordance with this Article 12 shall survive such termination.

12.1.9 Remedies. The Parties agree that monetary damages would be inadequate to compensate a Party for another Party's Breach of its obligations under this Article 12. Each Party accordingly agrees that the disclosing Party shall be entitled to equitable relief, by way of injunction or otherwise, if the receiving Party Breaches or threatens to Breach its obligations under this Article 12, which equitable relief shall be granted without bond or proof of damages, and the breaching Party shall not plead in defense that there would be an adequate remedy at law. Such remedy shall not be deemed an exclusive remedy for the Breach of this Article 12, but shall be in addition to all other remedies available at law or in equity. The Parties further acknowledge and agree that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope. No Party, however, shall be liable for indirect, incidental, or consequential or punitive damages of any nature or kind resulting from or arising in connection with this Article 12.

12.1.10 Disclosure to FERC, its Staff or a State. Notwithstanding anything in this Article 12 to the contrary, and pursuant to 18 C.F.R. § 1b.20, if FERC or its staff, during the course of an investigation or otherwise, requests information from a Party that is otherwise required to be maintained in confidence pursuant to this Agreement, the Party shall provide the requested information to FERC or its staff, within the time provided for in the request for information. In providing the information to FERC or its staff, the Party must, consistent with 18 C.F.R. § 388.112, request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. Parties are prohibited from notifying the other Parties to this Agreement prior to the release of the Confidential Information to FERC or its

staff. The Party shall notify the other Parties to the Agreement when it is notified by FERC or its staff that a request to release Confidential Information has been received by FERC, at which time any of the Parties may respond before such information would be made public, pursuant to 18 C.F.R. § 388.112. Requests from a state regulatory body conducting a confidential investigation shall be treated in a similar manner if consistent with the applicable state rules and regulations.

12.1.11 Subject to the exception in Article 12.1.10, any information that a disclosing Party claims is competitively sensitive, commercial or financial information under this Agreement shall not be disclosed by the receiving Party to any person not employed or retained by the receiving Party, except to the extent disclosure is (i) required by law; (ii) reasonably deemed by the disclosing Party to be required to be disclosed in connection with a dispute between or among the Parties, or the defense of litigation or dispute; (iii) otherwise permitted by consent of the disclosing Party, such consent not to be unreasonably withheld; or (iv) necessary to fulfill its obligations under this Agreement or as the Regional Transmission Organization or a Local Balancing Authority operator including disclosing the Confidential Information to a regional or national reliability organization. The Party asserting confidentiality shall notify the receiving Party in writing of the information that Party claims is confidential. Prior to any disclosures of that Party's Confidential Information under this subparagraph, or if any non-Party or Governmental Authority makes any request or demand for any of the information described in this subparagraph, the Party who received the Confidential Information from the disclosing Party agrees to promptly notify the disclosing Party in writing and agrees to assert confidentiality and cooperate with the disclosing Party in seeking to protect the Confidential Information from public disclosure by confidentiality agreement, protective order or other reasonable measures.

ARTICLE 13

INFORMATION ACCESS AND AUDIT RIGHTS

13.1 Information Access. Each Party shall make available to the other Parties information necessary to verify the costs incurred by the other Parties for which the requesting Party is responsible under this Agreement and carry out obligations and responsibilities under this Agreement, provided that the Parties shall not use such information for purposes other than those set forth in this Article 13.1 and to enforce their rights under this Agreement.

13.2 Audit Rights. Subject to the requirements of confidentiality under Article 12 of this Agreement, the accounts and records related to the design, engineering, procurement, and construction of the Network Upgrades and Direct Assignment Facilities shall be subject to audit during the period of this Agreement and for a period of twenty-four (24) months following the Transmission Owner's issuance of a final invoice in accordance with Article 6.4. Customer at its expense shall have the right, during normal business hours,

and upon prior reasonable notice to the other Parties, to audit such accounts and records. Any audit authorized by this Article 13.2 shall be performed at the offices where such accounts and records are maintained and shall be limited to those portions of such accounts and records that relate to obligations under this Agreement.

ARTICLE 14 DISPUTES

- 14.1 Submission.** Any claim or dispute, which a Party may have against another Party, arising out of this Agreement shall be submitted for resolution in accordance with the dispute resolution provisions of the Tariff.
- 14.2 Rights under the Federal Power Act.** Nothing in this Article 14 shall restrict the rights of any Party to file a complaint or a petition with FERC under relevant provisions of the Federal Power Act.
- 14.3 Equitable Remedies.** Nothing in this Article shall prevent a Party from pursuing or seeking any equitable remedy available to it under Applicable Laws and Regulations, at any time, before a Governmental Authority.

ARTICLE 15 NOTICES

- 15.1 General.** Any notice, demand or request required or permitted to be given by a Party to another Party and any instrument required or permitted to be tendered or delivered by a Party in writing to another Party may be so given, tendered or delivered, as the case may be, by depositing the same with the United States Postal Service with postage prepaid, for transmission by certified or registered mail, addressed to the Parties, or personally delivered to the Parties, at the address set out below:

To Transmission Provider:

MISO

Attn: Director, Resource Utilization
720 City Center Drive
Carmel, IN 46032

To Transmission Owner:

Minnesota Power

Vice President, Transmission & Distribution
30 West Superior Street
Duluth, MN 55802

To Customer:

Minnesota Power

Vice President, Strategy and Planning

30 West Superior Street
Duluth, MN 55802

15.2 Billings and Payments. Billings and payments shall be sent to the addresses shown in Article 15.1 unless otherwise agreed to by the Parties.

15.3 Alternative Forms of Notice. Any notice or request required or permitted to be given by a Party to another Party and not required by this Agreement to be given in writing may be so given by telephone, facsimile or email to the telephone numbers and email addresses set out below:

To Transmission Provider:

MISO

Voice telephone – (317) 249-5700

Facsimile telephone – (317) 249-5358

Email address – misotap@misoenergy.org or

MISOTransmissionAccessPlanning@misoenergy.org

To Transmission Owner:

Minnesota Power

Director – System Operations, Performance & Compliance

Voice telephone – (218) 723-7414

Email address – lfrisk@mnpower.com or

MPTransmissionInformationNotifications@mnpower.com

To Customer:

Minnesota Power

RTO Coordination Manager

Voice telephone – (218) 723-7466

Email address – rnyholm@mnpower.com

15.4 DUNS #. If Transmission Owner and Customer have not obtained DUNS numbers by the time this Agreement is executed, Transmission Owner and Customer will forward their DUNS numbers within five (5) Business Days of having obtained such numbers to Transmission Provider by facsimile telephone or email to the fax number or email set out below:

Transmission Owner

DUNS Number: 617232889

Customer

DUNS Number: 617232889

- 15.5 Notification of In-Service Date.** Transmission Owner will serve to Transmission Provider a copy of Appendix B as forwarded to Customer on the same day to the address shown in Article 15.1, and by facsimile telephone to the numbers set out below:

To Transmission Provider:**MISO**

Facsimile telephone – (317) 249-5703

And copy to

MISO

Attn: Director, Resource Utilization
720 City Center Drive
Carmel, IN 46032

ARTICLE 16 MISCELLANEOUS

- 16.1 Waiver.** Except as otherwise provided for in this Agreement, the failure of any Party to comply with any obligation, covenant, agreement, or condition herein may be waived by the Parties entitled to the benefits thereof only by a written instrument signed by the Parties granting such waiver. Any waiver at any time by a Party of its rights with respect to a Default under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall not be deemed a waiver or continuing waiver with respect to any subsequent Default or other matter.
- 16.2 Governing Law.** The validity, interpretation and performance of this Agreement and each of its provisions shall be governed by the laws of the state of Minnesota where approximately 50 percent of the Network Upgrades and/or Direct Assignment Facilities referenced in Appendix A are located without regard to its conflicts of law principles.
- 16.3 Headings Not to Affect Meaning.** The descriptive headings of the various Sections and Articles of this Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms and provisions hereof.
- 16.4 Amendments and Rights Under the Federal Power Act.** Transmission Provider shall have the right to make a unilateral filing with FERC to modify this Agreement with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation under Section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder, and Transmission Owner and Customer shall have the right to make a unilateral filing with FERC to modify this Agreement pursuant to Section 206 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder; provided, however, that each Party shall have the right to protest any such filing and to participate fully in any proceeding before FERC in which such modifications may be considered. Nothing in this Agreement shall limit the rights of the Parties or of FERC under Sections 205 or 206 of the Federal Power Act and FERC's rules and regulations thereunder, except to the extent that the Parties otherwise mutually agree as provided herein.
- 16.5 Entire Agreement.** This Agreement, together with all the exhibits, constitutes the final and entire written agreement among the Parties hereto with reference to the subject matter hereof, and is a complete and exclusive statement of those terms and conditions and supersedes all prior negotiations, representations or agreements, either written or oral, with respect to the specific subject matter of this Agreement. No change or modification as to any of the provisions hereof shall be binding on any Party unless reduced to writing and approved by the duly authorized officer or agent of Customer, Transmission Owner, and Transmission Provider.
- 16.6 Counterparts.** This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

- 16.7 Binding Effect.** This Agreement and the rights and obligations hereof, shall be binding upon and shall inure to the benefit of the Parties hereto and their successors and assigns. No person or party shall have any rights, benefits or interests, direct or indirect, arising from this Agreement except the Parties hereto, their successors and authorized assigns. The Parties expressly disclaim any intent to create any rights in any person or party as a third party beneficiary to this Agreement.
- 16.8 Conflicts.** In the event of a conflict between the body of this Agreement and any attachment, appendix or exhibit hereto, the terms and provisions of the body of this Agreement shall prevail and be deemed to be the final intent of the Parties.
- 16.9 Regulatory Requirements.** Each Party's obligations under this Agreement shall be subject to its receipt of any required approval or certificate from one or more Governmental Authorities in the form and substance satisfactory to the receiving Party, or the Party making any required filings with, or providing notice to, such Governmental Authorities, and the expiration of any time period associated therewith. Each Party shall in good faith seek these other approvals as soon as is reasonably practicable.

ARTICLE 17

REPRESENTATIONS AND WARRANTIES

- 17.1 General.** Each Party hereby represents, warrants and covenants as follows with these representations, warranties, and covenants effective as to the Party during the full time this Agreement is effective:
- 17.1.1. Good Standing.** Such Party is duly organized or formed, as applicable, validity existing and in good standing under the laws of its state of organization or formation, and is in good standing under the laws of the respective state(s) of its organization as stated in the preamble of this Agreement.
- 17.1.2 Authority.** Such Party has the right, power and authority to enter into this Agreement, to become a party hereto and to perform its obligations hereunder, and this Agreement is a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms.
- 17.1.3 No Conflict.** The execution, delivery and performance of this Agreement does not violate or conflict with the organizational or formation documents, or bylaws or operating agreement, of such Party, or any judgment, license, permit or order or material agreement or instrument applicable to or binding upon such Party or any of its assets.
- 17.1.4 Consent and Approval.** That it has sought or obtained, or, in accordance with this Agreement will seek or obtain, each consent, approval, authorization or order of, or acceptance of a filing with, or notice to, any Governmental Authority with jurisdiction concerning this Agreement, in connection with the execution, delivery and performance of this Agreement.

17.1.5 Solvency. That such Party is financially solvent.

IN WITNESS WHEREOF, the Parties have executed this Agreement in multiple originals, each of which shall constitute and be an original Agreement among the Parties.

Transmission Provider

Midcontinent Independent System Operator, Inc.

By: 

February 28, 2024 kkh

Name: Aubrey Johnson

Title: VP, System Planning & Competitive Development

Transmission Owner

Minnesota Power

By: 

Name: Josh Skelton

Title: Chief Operating Officer - MP

Customer

Minnesota Power

By: 

Name: Bethany M. Owen

Title: Chief Executive Officer

Facilities Construction Agreement
APPENDIX A
NETWORK UPGRADES, COST ESTIMATES AND RESPONSIBILITY,
TRANSMISSION CREDITS, CONSTRUCTION SCHEDULE AND MONTHLY
PAYMENT SCHEDULE

This Appendix A is a part of the Facilities Construction Agreement between Customer, Transmission Owner, and Transmission Provider. Terms used in this Appendix A with initial capitalization not defined in this Appendix A shall have the meaning set out in the Agreement

The upgrades required to be made by the Transmission Owner under this Agreement because of the Transmission Service Request include Direct Assignment Facilities and Network Upgrades, as defined in Module B and Attachment N of the Tariff. The Network Upgrades under this Agreement are governed by Module B and Attachment N of the Tariff.

1.1 Network Upgrades to be installed by Transmission Owner.

1.1.1 Transmission Owner Substation Network Upgrades:

To modernize the terminals of the existing Square Butte HVDC Line and implement the latest voltage source converter (“VSC”) HVDC technology, new buildings and electrical infrastructure need to be constructed on a new site near the existing Center and Arrowhead HVDC terminals. Due to the specialized nature of the technology, the new VSC HVDC converter stations will be delivered as turnkey projects by the original equipment manufacturer (“OEM”). The scope of supply for the HVDC OEM will include the relocated converter stations, including valves, converter transformers, smoothing reactors, DC equipment, AC circuit breakers, control & protection, and all associated facilities. The new VSC HVDC converter stations will be designed to interconnect at 345 kV on the AC system side. To accommodate interconnection of the new VSC HVDC converter stations, new AC interconnection facilities will be constructed including new 345/230 kV substations, 345 kV transmission lines, and 230 kV transmission lines. New AC interconnection facilities are listed below.

In Minnesota:

- Construction of a new St. Louis County 345/230 kV Substation located less than one mile west of the Arrowhead Substation
- Construction of a new 345 kV transmission line from the HVDC converter station to the St. Louis County Substation
- Construction of two parallel 230 kV lines from the St. Louis County Substation to the existing Arrowhead Substation
- At Arrowhead Substation, the two new 230 kV lines will be interconnected to the existing HVDC Pole 1 and Pole 2 bus positions, which will be rebuilt with higher-capacity bus and electrical equipment to accommodate the increased HVDC capacity.
- A short portion of the existing ± 250 kV HVDC Line in Minnesota will be reconfigured to terminate at the new HVDC converter station.

In North Dakota:

- Establishment of a new Nelson Lake 230 kV Switching Station to tie together the existing Minnesota Power Square Butte East – Bison 230 kV Line with the existing Great River Energy Square Butte – Stanton 230 kV Line.
- Construction of a second 230 kV circuit between Nelson Lake and Square Butte East using existing double-circuit capable structures.
- Addition of a 230 kV breaker at the Square Butte East Substation to accommodate the second Nelson Lake – Square Butte East 230 kV circuit
- Expansion of the Nelson Lake 230 kV Switching Station to add a 345/230 kV transformer and 345 kV line entrance.
- Construction of a new 345 kV line from Nelson Lake to the new HVDC converter station
- Construction of a new 345 kV substation at the new HVDC converter station site
- A portion of the existing ± 250 kV HVDC Line in North Dakota will need to be reconfigured to terminate at the new HVDC converter station.

Additional equipment upgrades may be deemed necessary by the Transmission Owner or the HVDC OEM during the specification, detailed design, and engineering phase of the project.

1.1.2 Transmission Owner Transmission Line Network Upgrades:

The upgrades necessary to increase the capacity of the HVDC transmission line from 550 MW to 900 MW are likely to consist primarily of replacing existing structures with taller structures to increase conductor-to-ground clearance at the higher operating temperature. A short segment of the transmission line with a smaller conductor will need to be rebuilt with a larger conductor.

1.1.3 Transmission Owner Transmission Line Permitting:

Due to the relocation of the converter stations and the length of new AC interconnection facilities required to re-connect to the existing system, the HVDC Modernization Project will require state-level permits in both Minnesota and North Dakota. In Minnesota, a Certificate of Need and Route Permit will be required from the State of Minnesota. In North Dakota, a Certificate of Corridor Compatibility and a Route Permit will be required. Minnesota Power will obtain the necessary permits in both states

1.1.4 Cost Estimates and Responsibility.

The estimated cost for these network upgrades is \$878,000,000. These costs of upgrades are shared by the Transmission Owner and Customer. **The estimated cost from Customer with Transmission Service Request 91365462 to Transmission Owner is \$167,000,000.** The Customer(s) hereby acknowledge and agree that the costs, expenses, and charges set out in Table 1 are only an estimate and that the Customer(s) shall pay the Transmission Owner for their allocated amounts for all costs, expenses, and charges. Updated estimates will be provided annually by the Transmission Owners on request from the Customer.

This is detailed below in Table 1 and is subject to applicable Tax Gross.

Table 1: Network Upgrades Cost Details

HVDC 900 MW Upgrade	Total Estimated Cost	Cost Assigned to Transmission Service Requests #91365462
Converter Station Replacement	\$705,000,000	\$123,000,000
Interconnections to AC System	\$115,000,000	\$11,000,000
Transmission Line Modification	\$58,000,000	\$33,000,000
Internal & Professional Services	Included	Included
Total (in 2022 dollars)	\$878,000,000	\$167,000,000

1.2.4.1 Major Material List of Transmission Owner's Network Upgrades See Exhibit C2

1.2 Direct Assignment Facilities - None.

1.3 First Equipment Order (including permitting). See Table 2 below.

1.3.1. Permitting And Land Rights – Transmission Owner Network Upgrades See Section 1.8.

1.4 Transmission Credits. See Article 3.2.2 of the Agreement.

1.5 Construction Schedule. Where applicable, construction of the Transmission Owner Network Upgrades and Special Protection Facilities is scheduled as follows and will be periodically updated as necessary:

Table 2: Transmission Owner Construction Activities

Milestone Number	Milestone Description	Start Date
1.	Facilities Construction Agreement Executed.	Aug/Sep-2023
2.	Minnesota Certificate of Need & Route Permit Applications Filed.	Jun-2023
3.	North Dakota Corridor Compatibility and Route Permit Applications Filed.	Oct-2023

4.	Begin Front End Engineering & Design with HVDC OEM.	Jan-2024
5.	Major Permits Received in Minnesota & North Dakota.	Jul-2024
6.	Order Long Leadtime Equipment for AC Substations.	Nov-2024
7.	Clearing Begins.	Jan-2025
8.	Construction of AC Interconnection Facilities Begins.	May-2025
9.	Construction of HVDC Transmission Line Upgrades Begins.	Aug-2025
10.	Receive Firm Proposal from HVDC OEM.	Aug-2026
11.	Execute Firm EPC Contract with HVDC OEM.	Oct-2026
12.	Construction of HVDC Converter Stations Begins.	Oct-2027
13.	In-Service Date.	Apr-2030

Note:

The construction schedule assumes that the Transmission Owner has obtained final authorizations and security from Customer and all necessary permits from Governmental Authorities as necessary prerequisites to commence construction of any of the Network Upgrades and Special Protection Facilities.

1.6 Payment Schedule.

1.6.1 Timing of and Adjustments to Customer's Payments and Security.

1.6.2 Monthly Payment Schedule. Following approval of the state permits set forth in Section 1.2.3, in accordance with Attachment N, the Customer will begin paying a monthly dollar assessment. Monthly payments by the Customer will continue until Transmission Owner has recovered the cost of all Directly Assigned Facilities and Transmission Owner Network Upgrades.

A Customer that fails to make payments when due will be given a Breach notice. Unless the Breach is cured in accordance with Article 9 of this agreement, the Transmission Owner is relieved from performing under this Agreement. Failure by any Customer to comply with Article 9.2.2(A) or 9.2.2(B) relative to such Breach may, pursuant to Article 9.2.2 of the Agreement, result in termination of the Agreement as to that Customer.

1.6.3 Security Amount.

1.6.4.1 Except as set forth under Section 1.7.3.1, Security shall be composed of either a Guaranty, a letter of credit as described in Section 1.7.4 or a cash escrow as described in Section 1.7.4.2, at Customer's option, or a combination of these options as long as the total amount of Security is

not less than the amount then required. Notwithstanding the foregoing, the Guaranty amount may not comprise more than fifty percent (50%) of the overall total amount of Security, provided that if Customer has delivered a notice reducing the amount of Security required pursuant to Section 1.7.7, then the Guaranty may comprise up to 100% of the overall total amount of Security at the Guarantor's option. Customer shall be (i) permitted from time to time to change the form and combination of such posted Security provided that no Event of Default with respect to Customer then exists so long as Transmission Owner is provided timely Notice of the change, and (ii) required, if Customer has provided Security, or any portion thereof, in the form of a Guaranty, if the entity or entities providing a Guaranty no longer qualify as a Guarantor, Customer shall within ten (10) Business Days of Transmission Owner's Notice to do so (A) replace such Guaranty with either a Guaranty from an entity or entities meeting the requirements as a Guarantor and/or (B) deliver a letter of credit or performance bond as described in Section 1.7.4.3 and/or (C) supply a cash escrow as described in Section 1.7.4.2, at Customer's option, in any case, in the aggregate amount of the then applicable Security, less the aggregate amount of any prior draws on such Security. Upon receipt of such substitute Security, any such Guaranty shall be deemed cancelled.

- 1.6.4.2** If Customer elects to utilize a cash escrow as Security, it shall establish an interest-bearing escrow account with a commercial bank or other mutually acceptable escrow agent as escrow agent, and the account shall name Transmission Owner as the beneficiary for the duration of the existence of the escrow account. The escrow account shall be in United States currency, and funds in the account may be invested in a money-market fund, short-term treasury obligations, investment-grade commercial paper or other investment-grade investments with maturities of three (3) months or less. All income and interest earned on the accounts held in the escrow account shall accrue for the benefit of the Customer, and Customer may withdraw the income and interest earned at any time as long as the balance in the account after the withdrawal meets the minimum funding requirements of this Section 1.7.4.2. The escrow agreement shall require the escrow agent to notify Transmission Owner of the balance in the escrow account from time to time. The escrow agreement governing the account shall include terms that (i) prohibit termination of the account prior to establishment of alternative Security that satisfies all the requirements of this FCA; (ii) require Notice of no less than sixty (60) Days by the escrow agent to Transmission Owner prior to any termination of the account; and (iii) allow Transmission Owner to draw the entire balance in the escrow account up to the amount of the Security if Security has not been replaced in accordance with this Agreement at least five (5) Business Days prior to the expiration or termination of the escrow account, and

Transmission Owner shall hold such amounts in lieu of escrow until such time as the Security has been replaced, at which time the funds shall be returned to Customer. At the end of the Term, any balance remaining in the escrow account shall be returned or released to Customer.

- 1.6.4.3** In conjunction with or instead of a Guaranty or cash security as provided in Section 1.7.4.2, Customer may provide Security in the form of an irrevocable letter of credit in a commercially reasonable form and otherwise in compliance with the requirements of this Section 1.7.4 and in form and substance acceptable to the Issuer (as defined below) (the “LOC”). The LOC shall be issued by a state or federally chartered commercial bank which issues similar letters of credit in the ordinary course of its business and that (i) has an unsecured bond rating or long-term senior unsecured debt rating equivalent to A- or better as determined by at least two (2) rating agencies, one of which must be either S&P or Moody’s, or, if these are not available, CAMEL ratings from the FDIC or OCC used in the banking industry no less than a 3 and (ii) has a minimum of One Hundred Million Dollars (\$100,000,000) in capital (the “Issuer”). The LOC must: (i) be issued for a minimum term of three hundred and sixty (360) Days, and, where permitted by the Issuer, shall be automatically extended for a period of one (1) year on each successive expiration date unless, at least ninety (90) Days before the current expiration date, the Issuer notifies Customer and Transmission Owner by certified mail that the Issuer has decided not to extend the letter of credit; (ii) provide that draws shall be payable upon presentation of a sight draft executed by an officer of Transmission Owner substantially in the form approved by Transmission Owner; and (iii) expressly permit partial and multiple draws. Any unused portion of the letter of credit shall be available, regardless of renewal, through the then current expiration date. Customer may replace the letter of credit with another Issuer which includes a provision for at least ninety (90) Days advance Notice to Transmission Owner and shall cause the renewal or extension of the LOC meeting the criteria set forth in this Section 1.7.4.3 within thirty (30) days prior to the expiration or cancellation of the then current LOC, and failure to do so shall authorize Transmission Owner to draw immediately upon the then current LOC. Transmission Owner shall then, at Customer’s cost and with Customer’s funds, place the amounts so drawn in an interest bearing escrow account in accordance with Section 1.7.4.2 above, until and unless Customer provides a substitute form of such security meeting the requirements of this Section 1.7.4. Security in the form of an irrevocable standby letter of credit shall be governed by the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Brochure No. 500 or as otherwise required by the Issuer of the LOC.

- 1.6.4.4** Customer shall provide Guarantor's annual audited financial statements to Transmission Owner within one hundred twenty (120) days after the end of each calendar year. Transmission Owner shall have the right to monitor the financial condition of Customer, Guarantor, and the Issuer to the extent set forth herein, and Customer shall provide written Notice to Transmission Owner within five (5) Business Days of becoming aware that (i) the Issuer does not satisfy the requirements of the second sentence of Section 1.7.4.3, (ii) ALLETE, Inc. or an affiliate is the Guarantor, such entity does not, collectively, have a tangible net worth of at least Five Hundred Million Dollars (\$500,000,000), or (iii) if the Guarantor is not ALLETE, Inc. or an affiliate such Person does not have an Investment Grade Credit Rating, and in such event Customer shall provide alternative Security as soon as practicable that complies with this Section 1.7.4.4 and in no event later than thirty (30) Days after becoming aware of the Issuer's or a Guarantor's failure to meet the requirements of this Section 1.7.
- 1.6.5** Release of Security. Promptly following the termination of this FCA and the completion of all Customer's obligations under this FCA, Transmission Owner shall release the Security (including any accumulated interest, if applicable) to Customer.
- 1.6.6** Permitted Draws; Effects of Draws. In addition to any other remedy available to it, Transmission Owner may, before or after termination of this FCA, draw against the Security to satisfy any undisputed obligations of Customer to Transmission Owner arising under this Agreement (including, without limitation, the payment of Availability Liquidated Damages, if any, or any indemnification obligations) which Customer has not otherwise paid or performed when due, after any required Notice and opportunity to cure. If Transmission Owner draws against the Security and Customer subsequently disputes Transmission Owner's entitlement to any portion of the funds drawn, neither Transmission Owner's draw, the Issuer's payment under the LOC, nor Customer's replenishment of the Security or reimbursement of the Issuer or escrow agent shall constitute a waiver of Customer's rights to seek recovery of any amount disputed. To the extent Transmission Owner elects to draw upon the Security to satisfy obligations that otherwise constitute, or might constitute, an Event of Default by Customer and entitle Transmission Owner to terminate this Agreement, Transmission Owner's draw against the Security shall be deemed a cure of such Event of Default and shall waive Transmission Owner's right to terminate in that respect. With respect to any Event of Default by Seller that remains uncured and which could be cured by payment of an undisputed amount to Transmission Owner, Transmission Owner shall first draw upon the Security to cure the Event of Default, and only if such Security is insufficient to cure the Event of Default shall any right of termination which Transmission Owner may otherwise have be exercised by Transmission Owner.

1.6.7 Reduction in Security. Transmission Owner may, by Notice from time to time to Customer, waive or reduce the amount of security required to be posted hereunder in consideration of an Affiliate of Transmission Owner having a minority ownership interest in Customer.

1.7 Permits, Licenses and Authorizations.

Transmission Owner will be responsible for all permits, licenses and authorizations.

Facilities Construction Agreement
APPENDIX B
NOTIFICATION OF COMPLETED CONSTRUCTION

This Appendix B is a part of the Facilities Construction Agreement among Customer, Transmission Owner, and Transmission Provider. Where applicable, when Transmission Owner has completed construction of the Transmission Owner Network Upgrades and/or Direct Assignment Facilities, Transmission Owner shall send notice to Customer and Transmission Provider, in substantially the form following:

[Date]

MISO

Attn: Director, Resource Utilization
720 City Center Drive
Carmel, IN 46032

Customer Address

Phone:

Fax:

Email:

Re: Completion of Network Upgrade/Direct Assignment Facilities

Dear [Name or Title]:

This letter is sent pursuant to the Facilities Construction Agreement among [Transmission Owner], [Customer], and MISO, dated _____, 20__.

On [Date], Transmission Owner completed to its satisfaction all work on the Network Upgrades and/or Direct Assignment Facilities required to facilitate the safe and reliable operation of Customer's Facility. Transmission Owner confirms that the Network Upgrade and/or Direct Assignment Facilities are in place.

Thank you.

[Signature]

[Transmission Owner Representative]

Facilities Construction Agreement

APPENDIX C Exhibits

This Appendix C is a part of the Facilities Construction Agreement among Customers,
Transmission Owner, and Transmission Provider.

Exhibit C1.

Transmission Owner Network Upgrade One Line

CUI//CEII MATERIAL – DO NOT RELEASE

CUI//CEII MATERIAL – DO NOT RELEASE

Exhibit C2
Estimated Cost of Transmission line and/or Substation Network Upgrades and Direct Assignment Facilities

The total estimated cost for the Network Upgrades for HVDC Converter Station, connections to AC System, Transmission Line Modifications is \$878,000,000.

The details of the cost for customer with Transmission Service Request #91365462 is shown below in Table 1, Table 2, Table 3.

Detailed Cost Estimate of Facilities to be Constructed by Transmission Owner

The anticipated costs of modernizing and upgrading the HVDC converter stations are shown in Table 1. The initial estimated converter station replacement base cost was provided by the HVDC OEM. If design assumptions change significantly during the development of the project, the base cost shown in Table 1 may change.

Table 1: Converter Station Replacement Cost Breakdown

HVDC 900 MW Upgrade	Estimated Cost	Cost Assigned to Transmission Service Requests ##91365462
Converter Station Base Cost	\$705,000,000	\$123,000,000
Internal & Professional Services	(Included)	(Included)
Contingency - Converter Station	(Included)	(Included)
AFUDC - Converter Station	(Included)	(Included)
Total (in 2022dollars)	\$705,000,000	\$123,000,000

The anticipated costs of AC Interconnection Facilities necessary to connect the relocated VSC HVDC converter stations to the existing AC transmission system are shown in Table 2. If design assumptions change significantly during the development of the project, the base costs shown in Table 2 may change.

Table 2: AC Interconnection Facilities Cost Breakdown

HVDC 900 MW Upgrade	Estimated Cost	Cost Assigned to Transmission Service Requests #91365462
Minnesota AC Interconnections	\$55,000,000	\$5,000,000
North Dakota AC Interconnections	\$40,000,000	\$3,000,000
Nelson Lake 230 kV Substation	\$20,000,000	\$3,000,000
Total (in 2022dollars)	\$115,000,000	\$11,000,000

Table 3: Transmission Line Modifications Cost Breakdown

HVDC 900 MW Upgrade	Estimated Cost	Cost Assigned to Transmission Service Requests #91365462
HVDC T-Line 900 MW Upgrade	\$58,000,000	\$33,000,000
HVDC T-Line AFUDC	(Included)	(Included)
HVDC T-Line Contingency	(Included)	(Included)
Total (in 2022dollars)	\$58,000,000	\$33,000,000

The anticipated costs of Transmission Line Modifications are shown in Table 3. The upgrade cost estimate is based on preliminary transmission structural engineering evaluations. If additional HVDC transmission line modifications or scope changes are found to be necessary during the development of the project, the costs presented in Table 3 may be impacted.

TAB D

PUBLIC

FACILITIES CONSTRUCTION AGREEMENT

entered into by the

Midcontinent Independent System Operator, Inc.,

And

~~{Customer}~~

Minnesota Power, a division of ALLETE, INC.

And

~~{Transmission Owner}~~

Minnesota Power, a division of ALLETE, INC.

entered into on the 28th day of February, 2024

FACILITIES CONSTRUCTION AGREEMENT

THIS FACILITIES CONSTRUCTION AGREEMENT (sometimes hereinafter referred to as “Agreement”) is made and entered into this 28th day of February, 2024, by and among the merchant function of Minnesota Power, a division of ALLETE, INC., a corporation, organized and existing under the laws 20 of the State of Minnesota (“Customer”), the **Midcontinent Independent System Operator, Inc.**, a non-profit, non-stock corporation organized and existing under the laws of the State of Delaware (“Transmission Provider”) and the transmission function of Minnesota Power, a division of ALLETE, INC., a corporation organized under the laws of the State of Minnesota (“Transmission Owner”). Customer, Transmission Owner, or Transmission Provider each may be referred to as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, Transmission Owner ~~and Customer~~ each owns electric facilities and is engaged in generation, transmission, distribution and/or sale of electric power and energy; and

WHEREAS, Transmission Provider has functional control of the operations of the Transmission System, as defined herein, and is responsible for providing transmission and interconnection service on the transmission facilities under its control; and

~~**WHEREAS**, Customer intends to own, and operate, or manage [Interconnection Customer Interconnection Facilities relating to the ____ MW generating facility] [MHVDC Connection Customer Connection Facilities relating to the ____ MW MHVDC Transmission Line] located in ____ County, ____ (“Facility”) with an expected Commercial Operation Date of ____ pursuant to the [GIA] [TCA] and will interconnect to the transmission system of ____, which system is either adjacent to or part of the Transmission System; and~~

WHEREAS, Customer intends to reserve firm point to point Transmission Service via Transmission Provider’s Reservation Request No 91365462; and

WHEREAS, the Transmission System is affected by the interconnection firm transmission service request of the Facility ~~to the ____ transmission system~~ and additions, modifications and upgrades must be made to certain existing facilities of the Transmission System to accommodate such ~~interconnection~~ transmission service; and

WHEREAS, Customer has requested, and Transmission Provider and Transmission Owner have agreed, to enter into this Agreement with Customer for the purpose of facilitating the ~~interconnection~~ transmission service of the Facility by the construction of necessary Network Upgrades to the Transmission System;

NOW, THEREFORE, in consideration of and subject to the mutual covenants contained herein, it is agreed:

ARTICLE 1 DEFINITIONS

Wherever used in this Agreement with initial capitalization, the following terms shall have the meanings specified or referred to in this Article 1. Terms used in this Agreement with initial capitalization not defined in this Article 1 shall have the meanings specified in the Tariff:

- 1.1 “Applicable Laws and Regulations” shall mean all duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority having jurisdiction over the Parties, their respective facilities and/or the respective services they provide.
- 1.2 “Applicable Reliability Council” shall mean the reliability council of NERC applicable to the Local Balancing Authority of the Transmission System to which the Facility is directly interconnected.
- 1.3 “Applicable Reliability Standards” shall mean Reliability Standards approved by the Federal Energy Regulatory Commission (FERC) under Section 215 of the Federal Power Act, as applicable.
- 1.4 “Breach” shall mean the failure of a Party to perform or observe any material term or condition of this Agreement and shall include, but not be limited to, the events described in Article 9.1.
- 1.5 “Breaching Party” shall mean a Party that is in Breach of this Agreement.
- ~~1.6 “Commercial Operation” shall mean the status of a [Generating Facility that has commenced generating electricity for sale, excluding electricity generated during Trial Operation] [MHVDC Transmission Line that has commenced transmitting electricity for sale, excluding electricity transmitted during Trial Operation].~~
- ~~1.7 “Commercial Operation Date” or “COD” of a Facility shall mean the date on which the Facility commences Commercial Operation pursuant to [Appendix E to the Generator Interconnection Agreement] [Appendix C to the Transmission Connection Agreement].~~
- ~~1.8~~1.6 “Confidential Information” shall mean any proprietary or commercially or competitively sensitive information, trade secret or information regarding a plan, specification, pattern, procedure, design, device, list, concept, policy or compilation relating to the present or planned business of a Party, or any other information as specified in Article 12, which is designated as confidential by the Party supplying the information, whether conveyed orally, electronically, in writing, through inspection, or otherwise, that is received by another Party.

- 1.97** “Customer” shall mean, for purposes of this Agreement, ~~an Interconnection~~
Transmission Customer as defined in the ~~GIP set forth in Attachment X or an MHVDC~~
~~Connection Customer as defined in the MHCP set forth in Attachment GGG~~ Tariff.
- 1.108** “Default” shall mean the failure of a Breaching Party to cure its Breach in accordance with Article 9 of this Agreement.
- 1.111.9** “Direct Assignment Facilities” shall mean those facilities or portions of facilities that are constructed by any Transmission Owner(s), ITC, or ITC Participant(s) for the sole use/benefit of a particular Transmission Customer requesting service under this Tariff. Direct Assignment Facilities shall be specified in the Service Agreement that governs service to the Transmission Customer and shall be subject to Commission approval.
- 1.10** “Effective Date” shall mean the date on which this Agreement becomes effective upon execution by the Parties subject to acceptance by the Commission, or if filed unexecuted, upon the date specified by the Commission.
- 1.1211** “FERC” shall mean the Federal Energy Regulatory Commission, also known as Commission, or its successor.
- 1.1312** “Force Majeure” shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party’s control. A Force Majeure event does not include an act of negligence or intentional wrongdoing by the Party claiming Force Majeure.
- 1.14** ~~“Generator Interconnection Procedures or “GIP” shall mean the interconnection procedures that are included in the Transmission Provider Tariff.~~
- 1.151.13** “Good Utility Practice” shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known to the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.
- 1.1614** “Governmental Authority” shall mean any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over the Parties, their respective facilities, or the respective

services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided, however, that such term does not include Customer, Transmission Provider, Transmission Owner, or any Affiliate thereof.

1.1715 “In-Service Date” shall mean the date upon which Customer reasonably expects it will be ready to begin use of the Network Upgrades and/or ~~System Protection~~ Direct Assignment Facilities.

~~**1.18** “Interconnection Agreement” or “GIA” shall mean that Generator Interconnection Agreement by and between Transmission Provider, _____ and Interconnection Customer and reported in MISO’s Electronic Quarterly Reports.~~

1.16

~~**1.19**~~ “Local Balancing Authority” shall mean an operational entity or a Joint Registration Organization which is (i) responsible for compliance with the subset of NERC Balancing Authority Reliability Standards defined in the Balancing Authority Agreement for their local area within the MISO Balancing Authority Area, (ii) a Party to Balancing Authority Agreement, excluding MISO, and (iii) shown in Appendix A to the Balancing Authority Agreement.

1.2017 “Loss” shall mean any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party’s performance, or non-performance of its obligations under this Agreement on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing, by the indemnified Party.

1.18 “Material Modification” shall mean: (1) modification to a Transmission Service Request in the queue that has a material adverse impact on the cost or timing or constraint identification of Transmission Service Request; or (2) planned modification to proposed network upgrades that is undergoing evaluation and has a material adverse impact on the Transmission System prior to the modification.

~~**1.19**~~**1.21** “NERC” shall mean the North American Electric Reliability Corporation, or its successor organization.

1.2220 “Network Upgrades” shall mean the additions, modifications, and upgrades to the Transmission System required ~~at or beyond the point at which the [Interconnection Facilities] [Connection Facilities] connect to the Transmission System or Distribution System, as applicable, to accommodate the interconnection of the Facility to the Transmission System~~ to accommodate the transmission service requests.

1.2321 “Non-Breaching Party” shall mean a Party that is not in Breach of this Agreement with regard to a specific event of Breach by another Party.

1.2422 “Reasonable Efforts” shall mean, with respect to an action required to be attempted or taken by a Party under this Agreement, efforts that are timely and consistent with Good

Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.

~~1.25 “Shared Network Upgrade” shall mean a Network Upgrade or Common Use Upgrade that is funded by a Customer(s), including when the Transmission Owner elects to fund the capital cost of such a Network Upgrade or Common Use Upgrade under Section 11.3 of the GIA, and also benefits other Customer(s) that are later identified as beneficiaries.~~

~~1.26 “System Protection Facilities” shall mean the equipment, including necessary protection signal communications equipment, required to protect (1) the Transmission System or other delivery systems or other generating systems from faults or other electrical disturbances occurring at the Facility and (2) the Facility from faults or other electrical system disturbances occurring on the Transmission System or on other delivery systems or other generating systems to which the Transmission System is directly connected.~~

1.27 Direct Assignment Facilities

1.23 “Tariff” shall mean the Transmission Provider’s Tariff through which open access transmission service and Interconnection Service are offered, as filed with the Commission, and as amended or supplemented from time to time, or any successor tariff.

~~1.28~~1.24 “Transmission Service” shall mean Point-to-Point Transmission Service provided under Module B of the Tariff on a firm and non-firm basis and the Network Integration Transmission Service under Module B of the Tariff.

1.25 “Transmission System” shall mean the facilities owned by Transmission Owner and controlled or operated by Transmission Provider or Transmission Owner that are used to provide Transmission Service or Wholesale Distribution Service under the Tariff.

ARTICLE 2 TERM OF AGREEMENT

2.1 Effective Date. Subject to required regulatory authorizations, including, without limitation, acceptance by FERC under Section 205 of the Federal Power Act, this Agreement shall become effective on the date on which this Agreement is made and entered into by the Parties.

2.2 Term.

2.2.1 General. This Agreement shall become effective as provided in Article 2.1 and shall continue in full force and effect until the earlier of (i) the final repayment, where applicable, by Transmission Owner of the amount funded by Customer for Transmission Owner’s design, procurement, construction and installation of the Network Upgrades and ~~System Protection~~Direct Assignment Facilities provided in Appendix A; (ii) the Parties agree to mutually terminate this Agreement; (iii) earlier termination is permitted or provided for under Appendix A of this Agreement; or (iv) Customer terminates this Agreement after providing

Transmission Provider and Transmission Owner with written notice at least sixty (60) Calendar Days prior to the proposed termination date, provided that Customer has no outstanding contractual obligations to Transmission Provider or Transmission Owner under this Agreement. No termination of this Agreement shall be effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination. The term of this Agreement may be adjusted upon mutual agreement of the Parties, if the ~~Commercial Operation Date for the Facility or the~~ In-Service Date for the Network Upgrades and ~~System Protection~~ Direct Assignment Facilities is adjusted in accordance with the rules and procedures established by Transmission Provider.

2.2.2 Termination Upon Default. In the event of a Default by a Party, the Non-Breaching Party or Parties shall have the termination rights described in Articles 9 and 10; provided, however, if an event described in part (c) of Article 9.1 has not occurred, and provided the Default does not pose a threat to the reliability of the Transmission System, neither Transmission Provider nor Transmission Owner may terminate this Agreement if Customer is the Breaching Party and Customer (i) has undertaken, in accordance with Article 9.2, to cure the Breach that led to the Default and has failed to cure the Breach for reasons other than Customer's failure to diligently commence reasonable and appropriate steps to cure the Breach within the thirty (30) Calendar Days allowed by Article 9.2, and (ii) compensates Transmission Provider or Transmission Owner within thirty (30) Calendar Days for the amount of damage billed to Customer by Transmission Provider or Transmission Owner for any damages, including costs and expenses, incurred by Transmission Provider or Transmission Owner as a result of such Default. In the event of an occurrence described in part (c) of Article 9.1, and providing the Default does not pose a threat to the reliability of the Transmission System, the Non-Breaching Party or Parties shall not terminate this Agreement provided that the Breaching Party provided an assurance of payment acceptable to the Non-Breaching Party, and pays any applicable damages.

2.2.3 Consequences of Termination. In the event of a termination by any Party, other than a termination by Customer due to a Breach by Transmission Owner, Customer must pay Transmission Owner all amounts still due and payable for construction and installation of the Network Upgrades and ~~System Protection~~ Direct Assignment Facilities (including, without limitation, any equipment ordered related to such construction), plus all out-of-pocket expenses incurred by Transmission Owner in connection with the construction and installation of the Network Upgrades and ~~System Protection~~ Direct Assignment Facilities, through the date of termination, plus any actual costs which Transmission Owner (A) reasonably incurs in winding up work and construction demobilization and (B) reasonably incurs to ensure the safety of persons and property and the integrity and safe and reliable operation of the Transmission System. Transmission Owner agrees to use Reasonable Efforts to minimize such costs.

~~Customer is responsible for the financial impact that is caused to another Interconnection Customer as a result of the termination of this Agreement, Customer's GIA, or any of Customer's other FCA(s) or MPFCA(s); financial impact as defined by Section 7.8 of Attachment X. To the extent that the Customer has already paid Transmission Owner for any or all such costs of materials or equipment not taken by Customer or upgrades not yet constructed, Transmission Owner shall promptly transfer such remaining amounts to Transmission Provider, less any costs, including penalties incurred by Transmission Owner to cancel any pending orders of or return such materials, equipment, or contracts. Transmission Provider will perform a financial impact analysis in accordance with Section 7.8 of Attachment X to determine the amount that should be refunded to Interconnection Customer. Transmission Provider shall refund such remaining amounts to Interconnection Customer, less any financial impact caused by the termination of this Agreement or Interconnection Customer's GIA, MPFCA(s), or other FCA(s), as determined through the analysis performed in accordance with Section 7.8 of Attachment X. If Interconnection Customer made its payment(s) through a letter of credit, surety bond, or parental guarantee, Transmission Owner will draw against that letter of credit, surety bond, or parental guarantee in an amount determined through the analysis performed in accordance with Section 7.8 of Attachment X and transfer that amount to Transmission Provider, unless Interconnection Customer funds the financial impact through another means.~~

2.2.4 Material Adverse Change. In the event of a material change in law or regulation that adversely affects, or may reasonably be expected to adversely affect a Party's rights and/or obligations under this Agreement, the Parties shall negotiate in good faith any amendments to this Agreement necessary to adapt the terms of this Agreement to such change in law or regulation, and Transmission Provider shall file such amendments with FERC. If, within sixty (60) Calendar Days after the occurrence of any event described in this Article 2.2.4, the Parties are unable to reach agreement as to any necessary amendments, the Parties may proceed under Article 14 to resolve any disputes related thereto; Transmission Provider and/or Transmission Owner shall have the right to make a unilateral filing with FERC to modify this Agreement pursuant to Section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder, and Customer shall have the right to make a unilateral filing with FERC to modify this Agreement pursuant to Section 206 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder; provided that a Party shall have the right to protest any such filing by another Party and to participate fully in any proceeding before FERC in which such modifications may be considered. If a Party is unable to fully perform this Agreement due to the occurrence of an event described in this Article 2.2.4 and such inability is not based on economic reasons, such Party shall not be deemed to be in Default of its obligations under this Agreement, provided that such Party is seeking dispute resolution under Article 14 or before FERC, to the extent that (i) such Party is unable to perform as a result of such an event and (ii) such Party acts in accordance with its obligations under this Article 2.2.4.

- 2.3 Regulatory Filing.** In accordance with Applicable Laws and Regulations, Transmission Provider shall file this Agreement, and any amendment to this Agreement with FERC as a service agreement under the Tariff. If Customer has executed this Agreement or any amendment to this Agreement, Customer shall not protest this Agreement or the amendment, shall reasonably cooperate with Transmission Provider with respect to such filing and shall provide any information, including the rendering of testimony or pleadings, as applicable, reasonably requested by Transmission Provider to the extent reasonably needed to comply with applicable regulatory requirements.
- 2.4 Survival.** The applicable provisions of this Agreement shall continue in effect after expiration, cancellation, or termination hereof to the extent necessary to provide for final billings, billing adjustments, and the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect.
- 2.5 Termination Obligations.** Upon any termination pursuant to this Agreement, Customer shall be responsible for the payment of all costs or other contractual obligations incurred prior to the termination date including previously incurred capital costs, penalties for early termination, costs of removal and site restoration.

ARTICLE 3

CONSTRUCTION OF NETWORK UPGRADES AND ~~SYSTEM PROTECTION~~DIRECT ASSIGNMENT FACILITIES

3.1 Construction.

3.1.1 Transmission Owner Obligations. Transmission Owner shall (or shall cause such action to) design, procure, construct and install, and Customer shall pay, consistent with Article 3.2, the cost of, all Network Upgrades and ~~System Protection~~Direct Assignment Facilities identified in Appendix A. All Network Upgrades and ~~System Protection~~Direct Assignment Facilities designed, procured, constructed and installed by Transmission Owner pursuant to this Agreement shall satisfy all requirements of applicable safety and/or engineering codes, including those requirements of Transmission Owner and Transmission Provider, and comply with Good Utility Practice, and further, shall satisfy all Applicable Laws and Regulations.

3.1.2 Suspension of Work.

3.1.2.1 Right to Suspend for Force Majeure Event. Provided that such suspension is permissible under the authorizations, permits or approvals granted for the construction of the Network Upgrades and ~~System Protection~~Direct Assignment Facilities Customer will not suspend unless a Force Majeure event occurs. Customer must provide written notice of its

request for suspension to Transmission Provider and Transmission Owner, and provide a description of the Force Majeure event that is acceptable to Transmission Provider. Suspension will only apply to Customer milestones and ~~[Interconnection Facilities]~~~~[Connection Facilities]~~ described in the Appendices of this Agreement. Prior to suspension, Customer must also provide security acceptable to Transmission Owner, equivalent to the higher of \$5 million or the total cost of all Network Upgrades, Transmission Owner's ~~System Protection~~Direct Assignment Facilities, and Distribution Upgrades listed in Appendix A of this Agreement. Network Upgrades, ~~System Protection~~Direct Assignment Facilities ~~, and Transmission Owner [Interconnection Facilities]~~ ~~[Connection Facilities]~~ will be constructed on the schedule described in the Appendices of this Agreement unless: (1) construction is prevented by the order of a Governmental Authority; (2) the Network Upgrades and ~~System Protection~~Direct Assignment Facilities are not needed by any other project; or (3) Transmission Owner or Transmission Provider determines that a Force Majeure event prevents construction. In the event of (1), (2), or (3) security shall be released upon the determination that the Network Upgrades and ~~System Protection~~Direct Assignment Facilities will no longer be constructed. If suspension occurs, Customer shall be responsible for the costs which Transmission Owner incurs (i) in accordance with this Agreement prior to the suspension, (ii) in suspending such work, including any costs incurred to perform such work as may be necessary to ensure the safety of persons and property and the integrity of the Transmission System and, if applicable, any costs incurred in connection with the cancellation of contracts and orders for material which Transmission Owner cannot reasonably avoid, and (iii) reasonably incurs in winding up work and construction demobilization; provided, however, that, prior to canceling any such contracts or orders, Transmission Owner shall obtain Customer's authorization. Customer shall be responsible for all costs incurred in connection with Customer's denial of authorization to cancel such contracts or orders. Interest as provided in

Article 3.2.2.2 on amounts paid by Customer to Transmission Owner for the design, procurement, construction and installation of the Network Upgrades and ~~System Protection~~Direct Assignment Facilities, shall not accrue during periods in which Customer has suspended construction under this Article 3.1.2. Transmission Owner shall invoice Customer pursuant to Article 6 and use Reasonable Efforts to minimize its costs. In the event that Customer suspends work pursuant to this Article, no construction duration, timelines and schedules set forth in Appendix A shall be suspended during the period of suspension unless ordered by a Governmental Authority, with such order being the Force Majeure event causing the suspension.

3.1.2.2 Recommencing of Work. If Customer requests Transmission Owner to recommence such work, Transmission Owner shall have no obligation to afford such work the priority it would have had but for the prior actions of Customer to suspend the work. In such event, Customer shall be responsible for any costs incurred in recommencing the work. All recommenced work shall be completed pursuant to an amended schedule for the ~~interconnection~~ transmission service agreed to by the Parties. Transmission Provider and Transmission Owner have the right to request ~~an Interconnection~~ a System Impact Study if conditions have materially changed subsequent to the request to suspend. Customer shall be responsible for the costs of any studies required.

3.1.2.3 Termination in the Event of a Material Modification. In the event Customer suspends the performance of work by Transmission Owner pursuant to this Article 3.1.2 and modifies its ~~Commercial Operation Date by three (3) years or more~~ In-Service Date, this Agreement shall be deemed terminated unless Customer demonstrates that the change is not a Material Modification under FERC precedent.

3.1.2.4 Right to Suspend Due to Default. Transmission Owner reserves the right, upon written notice to Customer, to suspend, at any time, work by Transmission Owner and the incurrence of additional expenses associated with the construction and installation of the Network Upgrades and ~~System Protection~~ Direct Assignment Facilities upon the occurrence of either a Breach that Customer is unable to cure pursuant to Article 9 or an Event of Default pursuant to Article 9. Any form of suspension by Transmission Owner shall not be barred by Articles 2.2.2, 2.2.3 or 9.2.2, nor shall it affect Transmission Owner's right to terminate the work or this Agreement pursuant to Article 10. In such events, Customer shall be responsible for costs which Transmission Owner incurs as set forth in Article 2.2.3.

3.1.3 Construction Status. Transmission Owner shall keep Customer and Transmission Provider advised periodically as to the progress of its respective design, procurement and construction efforts as described in Appendix A. Customer may, at any time, request a progress report from Transmission Owner, with a copy to be provided to Transmission Provider. If, at any time, Customer determines that the completion of the Network Upgrades and ~~System Protection~~ Direct Assignment Facilities will not be required until after the specified In-Service Date, Customer will provide written notice to Transmission Owner and Transmission Provider of such later date upon which the completion of the Network Upgrades and ~~System Protection~~ Direct Assignment Facilities would be required. Transmission Owner may delay the In-Service Date of the Network Upgrades accordingly.

3.1.4 Timely Completion. Transmission Owner shall use Reasonable Efforts to design, procure, construct, install, and test the Network Upgrades and ~~System Protection~~ Direct Assignment Facilities in accordance with the schedule set forth in Appendix A, which schedule may be revised from time to time by mutual agreement of the Parties. If any event occurs that will affect the time for completion of the Network Upgrades and ~~System Protection~~ Direct Assignment Facilities, or the ability to complete any of them, Transmission Owner and/or Transmission Provider shall promptly notify Customer, with a copy to the other Party. In such circumstances, Transmission Provider shall, within fifteen (15) Calendar Days of such notice, convene a technical meeting with Customer and Transmission Owner to evaluate the alternatives available to Customer. Transmission Owner and/or Transmission Provider shall also make available to Customer all studies and work papers related to the event and corresponding delay, including all information that is in the possession of Transmission Provider or Transmission Owner that is reasonably needed by Customer to evaluate alternatives. Transmission Owner shall, at Customer's request and expense, use Reasonable Efforts to accelerate its work under this Agreement to meet the schedule set forth in Appendix A, provided that Customer authorizes such actions and the costs associated therewith in advance.

3.2 ~~Interconnection~~ Network Upgrade Costs and Credits.

3.2.1 Costs. Customer shall pay to Transmission Owner costs (including taxes and financing costs) associated with seeking and obtaining all necessary approvals and of designing, engineering, constructing, and testing the Network Upgrades and ~~System Protection~~ Direct Assignment Facilities, as identified in Appendix A, in accordance with the cost recovery method provided herein. ~~As required by Section 7.3.2.1 and 7.3.3.1 of Attachment X, Transmission Owner shall have provided Transmission Provider with written notice if Transmission Owner elects to fund the capital for the Network Upgrades and Transmission Owner's System Protection Facilities; otherwise, such facilities, if any, shall be solely funded by Customer.~~

Customer shall pay for Direct Assignment Facilities and Network Upgrades in accordance with Attachment N of the Tariff. The cost assignment provisions shall apply to facilities constructed by Transmission Owner until such time as Transmission Owner is able to fully recover its revenue requirements as calculated in Attachment N, Section C. If the Transmission Service Request is discontinued or suspended, the Transmission Customer shall pay the Transmission Owner for the remaining applicable amounts that must be paid pursuant to Attachment N of the Tariff.

Transmission Owner shall install, at Customer's expense, any Transmission Owner's ~~System Protection~~ Direct Assignment Facilities that may be required on the Transmission Owner's ~~[Interconnection Facilities]~~ [Connection Facilities] or the Transmission Owner's transmission or distribution facilities as a result of the

~~interconnection of the Facility and the~~ Network Upgrades required by Customer's ~~[Interconnection Facilities] [Connection Facilities]~~ request.

~~In the event the Network Upgrade(s) are determined to be Shared Network Upgrade(s), Transmission Owner and Transmission Provider shall not be responsible for funding obligations related to the Shared Network Upgrade(s) under separate GIAs and/or TCAs. Transmission Provider shall only be responsible to reimburse those funds to Customer that Transmission Provider receives pursuant to separate GIAs and/or TCAs.~~

3.2.1.1 Lands of Other Property Owners. If any part of the Transmission Owner's ~~[Interconnection Facilities] [Connection Facilities]~~, Network Upgrades, ~~System Protection~~ Direct Assignment Facilities, and/or Distribution Upgrades is to be installed on property owned by persons other than Customer or Transmission Owner, Transmission Owner shall at Customer's expense use efforts, similar in nature and extent to those that it typically undertakes on its own behalf or on behalf of its Affiliates, including use of its eminent domain authority to the extent permitted and consistent with Applicable Laws and Regulations and, to the extent consistent with such Applicable Laws and Regulations, to procure from such persons any rights of use, licenses, rights of way and easements that are necessary to construct, operate, maintain, test, inspect, replace or remove the Transmission Owner's ~~[Interconnection Facilities] [Connection Facilities]~~, Network Upgrades, ~~System Protection~~ Direct Assignment Facilities, and/or Distribution Upgrades upon such property.

3.2.2 Credits.

3.2.2.1 Repayment. Customer shall be entitled to a cash repayment by Transmission Owner(s) that owns the Network Upgrades, of the amount paid respectively to Transmission Owner, if any, for the Network Upgrades, as provided under ~~Attachment FF of~~ the Tariff, and including any tax gross-up or other tax-related payments associated with the repayable portion of the Network Upgrades, and not repaid to Customer pursuant to Article 3.3.1 or otherwise, to be paid to Customer on a dollar-for-dollar basis for the non-usage sensitive portion of transmission charges, as payments are made under the Tariff for Transmission Service with respect to the Facility. Any repayment shall include interest calculated in accordance with the methodology set forth in FERC's regulations at 18 C.F.R. § 35.19 a(a)(2)(iii) from the date of any payment for Network Upgrades through the date on which Customer receives a repayment of such payment pursuant to this subparagraph. Interest shall not accrue during periods in which Customer has suspended construction pursuant to Article 3.1.2.1 or the Network Upgrades have been determined not to be needed pursuant to this Article 3.2.2.1. Customer may assign such repayment rights to any person.

~~If the Facility is designated a Network Resource under the Tariff, or if there are otherwise no incremental payments for Transmission Service resulting from the use of the Facility by Transmission Customer, and in the absence of another mutually agreeable payment schedule any repayments provided under Attachment FF shall be established equal to the applicable rate for Firm Point To Point Transmission Service for the pricing zone where the Network Load is located multiplied by the portion of the demonstrated output of the Facility designated as a Network Resource by the Network Customer(s) or in the absence of such designation, equal to the monthly firm single system wide rate defined under Schedule 7 of the Tariff multiplied by the portion of the demonstrated output of the Facility under contract to Network Customer(s) and consistent with studies pursuant to Section 3.2.2.2 of the GIP.~~

3.2.2.2 Amount. Transmission credits will be based on the final, actual cost of completing the Network Upgrades as provided by the final invoice prepared by Transmission Owner pursuant to Article 6.4 of this Agreement. Any repayment made pursuant to Article 3.2.2.1 shall include (i) the final, actual cost after any true-up amounts have been paid pursuant to Article 6.4, and (ii) interest calculated in accordance with the methodology set forth in FERC's regulations at 18 C.F.R. §35.19a(a)(2)(iii) from the date of any payment for Network Upgrades through the date on which Customer receives a repayment of such payment pursuant to this Article 3.2 until fully reimbursed. Interest shall not accrue during periods in which Customer has suspended construction pursuant to Article 3.1.2.1.

3.2.2.3 Alternative Payment Schedule. Notwithstanding the foregoing, as applicable and consistent ~~with the provisions of Attachment FF of~~ with the Tariff, Customer, Transmission Provider, and Transmission Owner, may adopt any alternative payment schedule that is mutually agreeable ~~so long as Transmission Owner takes one of the following actions no later than five (5) years from the Commercial Operation Date: (1) Return to Customer any amounts advanced for Network Upgrades not previously repaid, or (2) declare in writing that Transmission Owner will continue to provide payments to Customer on a dollar for dollar basis for the non-usage sensitive portion of transmission charges, or develop an alternative schedule that is mutually agreeable and provides for the return of all amounts advanced for Network Upgrades not previously repaid; however, full reimbursement shall not extend beyond twenty (20) years from the Commercial Operation Date.~~

3.2.2.4 Impact of Failure to Achieve Commercial Operation. ~~If the Facility fails to achieve Commercial Operation, but it or another generating~~

~~facility is later constructed and makes use of the Network Upgrades, Transmission Owner shall at that time reimburse Customer for the remaining applicable amounts that may be refundable pursuant to Attachment FF of the Tariff, that were advanced for the Network Upgrades on their respective systems as described above. Before any such reimbursement can occur, Customer, or the entity that ultimately constructs the Facility, if different, is responsible for identifying the entity to which the reimbursement must be made.~~ 3.2.2.4

RESERVED

3.2.2.5 Rights not Relinquished. Notwithstanding any other provision of this Agreement, nothing herein shall be construed as relinquishing or foreclosing any rights, including but not limited to firm transmission rights, capacity rights, transmission congestion rights, or transmission credits, that Customer, shall be entitled to, now or in the future under any other agreement or tariff as a result of, or otherwise associated with, the transmission capacity, if any, created by the Network Upgrades, including the right to obtain refunds or transmission credits for Transmission Service that is not associated with the Facility.

3.3 Taxes.

3.3.1 Indemnification for Contributions in Aid of Construction. The Parties intend that all payments made by Customer to Transmission Owner for the installation of the Network Upgrades and ~~System Protection~~ Direct Assignment Facilities shall be non-taxable contributions to capital in accordance with the Internal Revenue Code and any applicable state tax laws and shall not be taxable as contributions in aid of construction under the Internal Revenue Code and any applicable state tax laws. With regard only to such contributions, Transmission Owner shall not include a gross-up for income taxes in the amounts it charges Customer for the installation of the Network Upgrades and ~~System Protection~~ Direct Assignment Facilities unless (i) Transmission Owner has determined, in good faith, that the payments or property transfers made by Customer to Transmission Owner should be reported as income subject to taxation or (ii) any Governmental Authority directs Transmission Owner to report payments or property as income subject to taxation; provided, however, that Transmission Owner may require Customer to provide security for ~~[Interconnection Facilities]~~ ~~[Connection Facilities]~~; Network Upgrades, in a form reasonably acceptable to Transmission Owner (such as a parental guarantee or a letter of credit), in an amount equal to the cost consequences or any current tax liability under this Article. Customer shall reimburse Transmission Owner for such costs on a fully grossed-up basis, in accordance with this Article, within thirty (30) Calendar Days of receiving written notification from Transmission Owner of the amount due, including detail about how the amount was calculated.

The indemnification obligation shall terminate at the earlier of (1) the expiration of the ten-year testing period and the applicable statute of limitation, as it may be extended by Transmission Owner upon request of the IRS, to keep these years open for audit or adjustment, or (2) the occurrence of a subsequent taxable event and the payment of any related indemnification obligations as contemplated by this Article. Notwithstanding the foregoing provisions of this Article 3.3.1, and to the extent permitted by law, to the extent that the receipt of such payments by Transmission Owner is determined by any Governmental Authority to constitute income by Transmission Owner subject to taxation, Customer shall protect, indemnify and hold harmless Transmission Owner and its Affiliates, from all claims by any such Governmental Authority for any tax, interest and/or penalties associated with such determination. Upon receiving written notification of such determination from the Governmental Authority, Transmission Owner shall provide Customer with written notification within thirty (30) Calendar Days of such determination and notification. Transmission Owner, upon the timely written request by Customer and at Customer's expense, shall appeal, protest, seek abatement of, or otherwise oppose such determination. Transmission Owner reserves the right to make all decisions with regard to the prosecution of such appeal, protest, abatement or other contest, including the compromise or settlement of the claim; provided that Transmission Owner shall cooperate and consult in good faith with Customer regarding the conduct of such contest. Customer shall advance to Transmission Owner on a periodic basis as requested by Transmission Owner the estimated cost of prosecuting such appeal, protest, abatement or other contest. Customer shall not be required to pay Transmission Owner for the tax, interest and/or penalties prior to the seventh (7th) Calendar Day before the date on which Transmission Owner (i) is required to pay the tax, interest and/or penalties or other amount in lieu thereof pursuant to a compromise or settlement of the appeal, protest, abatement or other contest; (ii) is required to pay the tax, interest and/or penalties as the result of a final, non-appealable order by a Governmental Authority; or (iii) is required to pay the tax, interest and/or penalties as a prerequisite to an appeal, protest, abatement or other contest. In the event such appeal, protest, abatement or other contest results in a determination that Transmission Owner is not liable for any portion of any tax, interest and/or penalties for which Customer has already made payment to Transmission Owner, Transmission Owner shall promptly refund to Customer any payment attributable to the amount determined to be non-taxable, plus any interest or other payments Transmission Owner receives or which Transmission Owner may be entitled with respect to such payment. In accordance with Article 6, Customer shall provide Transmission Owner with credit assurances sufficient to meet Customer's estimated liability for reimbursement of Transmission Owner for taxes, interest and/or penalties under this Section 3.3.1. Such estimated liability shall be stated in Appendix A.

To the extent that Transmission Owner is a limited liability company and not a corporation, and has elected to be taxed as a partnership, then the following shall apply: Transmission Owner represents, and the Parties acknowledge, that

Transmission Owner is a limited liability company and is treated as a partnership for federal income tax purposes. Any payment made by Customer to Transmission Owner for Network Upgrades and ~~System Protection~~ Direct Assignment Facilities is to be treated as an upfront payment in accordance with Rev Proc 2005-35. It is anticipated by the Parties that any amounts paid by Customer to Transmission Owner for Network Upgrades and ~~System Protection~~ Direct Assignment Facilities will be reimbursed to Customer in accordance with the terms of this Agreement, provided Customer fulfills its obligations under this Agreement.

3.3.2 Private Letter Ruling. At Customer's request and expense, Transmission Owner shall file with the IRS a request for a private letter ruling as to whether any property transferred or sums paid, or to be paid, by Customer to Transmission Owner under this Agreement are subject to federal income taxation. Customer will prepare the initial draft of the request for a private letter ruling, and will certify under penalties of perjury that all facts represented in such request are true and accurate to the best of Customer's knowledge. Transmission Owner and Customer shall cooperate in good faith with respect to the submission of such request.

3.3.3 Other Taxes. Upon the timely request by Customer, and at Customer's sole expense, Transmission Owner shall appeal, protest, seek abatement of, or otherwise contest any tax (other than federal or state income tax) asserted or assessed against Transmission Owner for which Customer may be required to reimburse Transmission Owner under the terms of this Agreement. Customer shall pay to Transmission Owner on a periodic basis, as invoiced by Transmission Owner, Transmission Owner's documented reasonable costs of prosecuting such appeal, protest, abatement, or other contest. Customer and Transmission Owner shall cooperate in good faith with respect to any such contest. Unless the payment of such taxes is a prerequisite to an appeal or abatement or cannot be deferred, no amount shall be payable by Customer to Transmission Owner for such taxes until they are assessed by a final, non-appealable order by any court or agency of competent jurisdiction. In the event that a tax payment is withheld and ultimately due and payable after appeal, Customer will be responsible for all taxes, interest and penalties, other than penalties attributable to any delay caused by Transmission Owner. Each Party shall cooperate with the other Parties to maintain each Party's tax status. Nothing in this Agreement is intended to adversely affect any Party's tax-exempt status with respect to the issuance of bonds including, but not limited to, Local Furnishing Bonds.

ARTICLE 4 FORCE MAJEURE

4.1 Notice. The Party unable to carry out an obligation imposed on it by this Agreement due to a Force Majeure event shall notify the other Parties in writing or verbally with

subsequent notice in writing within a reasonable time after the occurrence of the cause relied on.

- 4.2 Duration of Force Majeure.** Except as set forth in Article 4.3, no Party will be considered in Default as to any obligation under this Agreement if prevented from fulfilling the obligation due to an event of Force Majeure. A Party shall not be responsible for any non-performance or be considered in Breach or Default under this Agreement due to Force Majeure. A Party shall be excused from whatever performance is affected for only the duration of the Force Majeure event and while the Party exercises Reasonable Efforts to alleviate such situation. As soon as the non-performing Party is able to resume performance of its obligations excused as a result of the occurrence of Force Majeure, such Party shall give prompt notice thereof to the other Parties.
- 4.3 Obligation to Make Payments.** Any Party's obligation to make payments for services incurred shall not be suspended by Force Majeure.

ARTICLE 5 INFORMATION REPORTING

- 5.1 Information Reporting Obligations.** Each Party shall, in accordance with Good Utility Practice, promptly provide to the other Parties all relevant information, documents, or data regarding the Party's facilities and equipment which may reasonably be expected to pertain to the reliability of the other Party's facilities and equipment and which has been reasonably requested by the other Party.
- 5.2 Non-Force Majeure Reporting.** A Party shall notify the other Parties when it becomes aware of its inability to comply with the provisions of this Agreement for a reason other than Force Majeure. The Parties agree to cooperate with each other and provide necessary information regarding such inability to comply, including, but not limited to, the date, duration, reason for the inability to comply, and corrective actions taken or planned to be taken with respect to such inability to comply. In the event of Force Majeure, a Party unable to comply with the provisions of this Agreement shall notify the other Parties in accordance with the provisions of Article 4.

ARTICLE 6 CREDITWORTHINESS, BILLING AND PAYMENTS

- 6.1 Creditworthiness.** By the earlier of (i) thirty (30) Calendar Days prior to the due date for Customer's first payment under the payment schedule specified in Appendix A or (ii) the first date specified in Appendix A for the ordering of equipment by Transmission Owner for installing the Network Upgrades and ~~System Protection~~ [Direct Assignment](#) Facilities, Customer shall provide Transmission Owner, at Transmission Owner's option, with a form of adequate assurance of creditworthiness reasonably acceptable to Transmission Owner. If the adequate assurance is a parental guarantee or surety bond, it must be made by an entity that meets the creditworthiness requirements of Transmission Owner, have terms and conditions reasonably acceptable to Transmission Owner and

guarantee payment of the amount specified in the next paragraph of this Article 6.1. If the adequate assurance is a letter of credit, it must be issued by a bank reasonably acceptable to Transmission Owner, specify a reasonable expiration date and may provide that the maximum amount available to be drawn under the letter shall reduce on a monthly basis in accordance with the monthly payment schedule. The surety bond must be issued by an insurer reasonably acceptable to Transmission Owner, specify a reasonable expiration date and may provide that the maximum amount assured under the bond shall reduce on a monthly basis in accordance with the monthly payment schedule. After the Network Upgrades and ~~System Protection~~ Direct Assignment Facilities have been placed in service and until Customer fully compensates Transmission Owner for construction of the Network Upgrades and ~~System Protection~~ Direct Assignment Facilities, Customer shall, subject to the standards of this Article 6.1, maintain a parental guarantee, surety bond, letter of credit, or some other credit assurance sufficient to meet its monthly payment obligation under Article 3.2.1, as specified in the following paragraph. Customer's estimated liability under Article 3.2.1 is stated in Appendix A.

Customer shall maintain as of the first day of each month beginning on the due date for Customer's first payment under the payment schedule specified in Appendix A, and continuing through to the ~~Commercial Operation~~ In-Service Date, a parental guarantee, surety bond or letter of credit in an amount sufficient to cover the applicable costs and cost commitments required of the Party responsible for building the facilities pursuant to the construction schedule developed in this Agreement for designing, engineering, seeking regulatory approval from any Governmental Authority, constructing, procuring and installing the facilities and shall be reduced on a dollar-for-dollar basis for payments made to Transmission Owner for these purposes as defined and established under Appendix A.

- 6.2 Invoice.** Each Party shall submit to the other Party, on a monthly basis, invoices of amounts due, if any, for the preceding month. Each invoice shall state the month to which the invoice applies and fully describe the services and equipment provided. The Parties may discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts a Party owes to the other Party under this Agreement, including interest payments or credits, shall be netted so that only the net amount remaining due shall be paid by the owing Party.
- 6.3 Payment.** Invoices shall be rendered to the paying Party at the address specified by the Parties. The Party receiving the invoice shall pay the invoice within thirty (30) Calendar Days of receipt. All payments shall be made in immediately available funds payable to the other Party, or by wire transfer to a bank named and account designated by the invoicing Party. Payment of invoices by a Party will not constitute a waiver of any rights or claims that Party may have under this Agreement.
- 6.4 Final Invoice.** Within six (6) months after completion of the construction of the Network Upgrades and ~~System Protection~~ Direct Assignment Facilities, Transmission Owner shall provide an invoice of the final cost of the construction of the Network Upgrades and ~~System Protection~~ Direct Assignment Facilities and shall set forth such

costs in sufficient detail to enable Customer to compare the actual costs with the estimates and to ascertain deviations, if any, from the cost estimates. Transmission Owner shall refund, with interest (calculated in accordance with 18 C.F.R. Section 35.19a(a)(2)(iii)), to Customer any amount by which the actual payment by Customer for estimated costs exceeds the actual costs of construction within thirty (30) Calendar Days of the issuance of such final construction invoice.

6.5 Interest. Interest on any unpaid amounts shall be calculated in accordance with 18 C.F.R. § 35.19a(a)(2)(iii).

6.6 Payment During Dispute. In the event of a billing dispute among the Parties, Transmission Owner shall continue to construct the Network Upgrades and ~~System Protection~~ Direct Assignment Facilities under this Agreement as long as Customer: (i) continues to make all payments not in dispute; and (ii) pays to Transmission Provider or Transmission Owner or into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If Customer fails to meet these two requirements, then Transmission Provider may or, at Transmission Owner's request upon Customer's failure to pay Transmission Owner, shall provide notice to Customer of a Default pursuant to Article 9. Within thirty (30) Calendar Days after the resolution of the dispute, the Party that owes money to another Party shall pay the amount due with interest calculated in accord with the methodology set forth in 18 C.F.R. § 35.19a(a)(2)(iii).

ARTICLE 7 ASSIGNMENT

7.1 Assignment. This Agreement may be assigned by any Party only with the written consent of the other Parties; provided that a Party may assign this Agreement without the consent of the other Parties to any affiliate of the assigning Party with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this Agreement; and provided further that Customer shall have the right to assign this Agreement, without the consent of either Transmission Provider or Transmission Owner, for collateral security purposes to aid in providing financing for the Facility, provided that Customer will promptly notify Transmission Provider and Transmission Owner of any such assignment. Any financing arrangement entered into by Customer pursuant to this Article will provide that prior to or upon the exercise of the secured Party's, trustee's or assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify Transmission Provider and Transmission Owner of the date and particulars of any such exercise of assignment right(s), including providing Transmission Provider and Transmission Owner with proof that it meets the requirements of Article 6.1. Any attempted assignment that violates this Article is void and ineffective. Any assignment under this Agreement shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.

ARTICLE 8 INDEMNITY

8.1 General. To the extent permitted by law, a Party (the “Indemnifying Party”) shall at all times indemnify, defend, and hold the other Parties (each an “Indemnified Party”) harmless from Loss, only as provided in the Tariff.

8.1.1 Indemnified Party. If an Indemnified Party is entitled to indemnification under this Article 8 as a result of a claim by a third party, and the Indemnifying Party fails, after notice and reasonable opportunity to proceed under Article 8.1, to assume the defense of such claim, such Indemnified Party may at the expense of the Indemnifying Party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.

8.1.2 Indemnifying Party. If an Indemnifying Party is obligated to indemnify and hold any Indemnified Party harmless under this Article 8, the amount owing to the Indemnified Party shall be the amount of such Indemnified Party’s actual Loss, net of any insurance or other recovery.

8.1.3 Indemnity Procedures. Promptly after receipt by an Indemnified Party of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in Article 8.1 may apply, the Indemnified Party shall notify the Indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a Party’s indemnification obligation unless such failure or delay is materially prejudicial to the Indemnifying Party.

The Indemnifying Party shall have the right to assume the defense thereof with counsel designated by such Indemnifying Party and reasonably satisfactory to the Indemnified Party. If the defendants in any such action include one or more Indemnified Parties and the Indemnifying Party and if the Indemnified Party reasonably concludes that there may be legal defenses available to it and/or other Indemnified Parties which are different from or additional to those available to the Indemnifying Party, the Indemnified Party shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on its own behalf. In such instances, the Indemnifying Party shall only be required to pay the fees and expenses of one additional attorney to represent an Indemnified Party or Indemnified Parties having such differing or additional legal defenses.

The Indemnified Party shall be entitled, at its expense, to participate in any such action, suit or proceeding, the defense of which has been assumed by the Indemnifying Party. Notwithstanding the foregoing, the Indemnifying Party (i) shall not be entitled to assume and control the defense of any such action, suit or proceedings if and to the extent that, in the opinion of the Indemnified Party and its counsel, such action, suit or proceeding involves the potential imposition of

criminal liability on the Indemnified Party, or there exists a conflict or adversity of interest between the Indemnified Party and the Indemnifying Party, in such event the Indemnifying Party shall pay the reasonable expenses of the Indemnified Party, and (ii) shall not settle or consent to the entry of any judgment in any action, suit or proceeding without the consent of the Indemnified Party, which shall not be reasonably withheld, conditioned or delayed.

- 8.2 Consequential Damages.** In no event shall any Party be liable to any other Party under any provision of this Agreement for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to another Party under another agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.

ARTICLE 9 BREACH, CURE AND DEFAULT

- 9.1 Events of Breach.** A Breach of this Agreement shall include:

- (a) The failure to pay any amount when due;
- (b) The failure to comply with any material term or condition of this Agreement, including but not limited to any material Breach of a representation, warranty or covenant made in this Agreement;
- (c) If a Party (i) is adjudicated bankrupt; (ii) files a voluntary petition in bankruptcy under any provision of any federal or state bankruptcy law or shall consent to the filing of any bankruptcy or reorganization petition against it under any similar law; (iii) makes a general assignment for the benefit of its creditors; or (iv) consents to the appointment of a receiver, trustee or liquidator;
- (d) Assignment of this Agreement in a manner inconsistent with the terms of this Agreement;
- (e) Failure of a Party to provide such access rights, or a Party's attempt to revoke access or terminate such access rights, as provided under this Agreement or ~~the any~~ related ~~GIA; or~~ agreements.
- (f) Failure of a Party to provide information or data to another Party as required under this Agreement, provided the Party entitled to the information or data under this Agreement requires such information or data to satisfy its obligations under this Agreement.

9.2 Notice of Breach, Cure and Default. Upon the occurrence of an event of Breach, the Party not in Breach, when it becomes aware of the Breach, shall give written notice of the Breach to the Breaching Party and to any other person representing a Party to this Agreement identified in writing to the other Party in advance. Such notice shall set forth, in reasonable detail, the nature of the Breach, and where known and applicable, the steps necessary to cure such Breach.

9.2.1 Upon the occurrence described in part (c) of Article 9.1, the Party experiencing such occurrence shall notify the other Party in writing within seven (7) Calendar Days after the commencement of such occurrence. Upon receiving written notice of the Breach hereunder, the Breaching Party shall have a period to cure such Breach (sometimes hereinafter referred as (“Cure Period”) which shall be thirty (30) Calendar Days unless such Breach is due to an occurrence under Article 9.1(a) or (c) in which case the cure period will be five (5) Business Days.

9.2.2 If the Breach is such that it cannot be cured within the Cure Period, the Breaching Party will commence in good faith all steps as are reasonable and appropriate to cure the Breach within such Cure Period and thereafter diligently pursue such action to completion. In the event the Breaching Party fails to:

- (a) cure the Breach, or to commence reasonable and appropriate steps to cure the Breach, within the Cure Period; or,
- (b) completely cure the Breach within sixty (60) Calendar Days if the Breach occurs pursuant to Article 9.1(b), (d), (e) or (f),

the Breaching Party will be in Default of this Agreement and the non-Breaching Parties may, at their option, either in concert or individually, (1) act to terminate this Agreement for cause by notifying the other Parties in writing, or (2) take whatever action at law or in equity as may appear necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreement, or covenants under this Agreement.

9.3 Rights in the Event of Default. Notwithstanding the foregoing, upon the occurrence of an event of Default, any non-Defaulting Party shall be entitled to exercise all rights and remedies it may have in equity or at law.

ARTICLE 10 TERMINATION OF AGREEMENT

10.1 Expiration of Term. Except as otherwise specified in this Article 10, the Parties’ obligations under this Agreement shall terminate at the conclusion of the term of this Agreement.

10.2 Termination. In addition to the termination provisions set forth in Article 2.2, a Party may terminate this Agreement upon the Default of another Party in accordance with this

Agreement. Subject to the limitations set forth in Article 10.3, in the event of a Default, a non-Defaulting Party may terminate this Agreement only upon the later of (i) its giving of written notice of termination to the other Parties; and (ii) unless no longer required by FERC, the filing at FERC of a notice of termination for this Agreement, which filing must be accepted for filing by FERC.

10.3 Disposition of Facilities Upon Termination of Agreement.

10.3.1 Transmission Provider and Transmission Owner Obligations. Upon termination of this Agreement, unless otherwise agreed by the Parties in writing, Transmission Owner:

- (a) shall, prior to the construction and installation of any portion of the Network Upgrades and ~~System Protection~~ Direct Assignment Facilities and to the extent possible, cancel any pending orders of, or return, such equipment or material for such Network Upgrades and ~~System Protection~~ Direct Assignment Facilities;
- (b) may keep in place any portion of the Network Upgrades and ~~System Protection~~ Direct Assignment Facilities already constructed and installed; and,
- (c) shall perform such work as may be necessary to ensure the safety of persons and property and to preserve the integrity of the Transmission System (*e.g.*, construction demobilization to return the system to its original state, wind-up work).

10.3.2 Customer Obligations. Upon billing by Transmission Owner, Customer shall reimburse Transmission Owner for any costs incurred by Transmission Owner in performance of the actions required or permitted by Article 10.3.1 and for the cost of any Network Upgrades and ~~System Protection~~ Direct Assignment Facilities described in Appendix A. Transmission Owner and Transmission Provider shall use Reasonable Efforts to minimize costs and shall offset the amounts owed by any salvage value of facilities, if applicable. Customer shall pay these costs pursuant to Article 6.3 of this Agreement.

10.3.3 Pre-construction or Installation. Upon termination of this Agreement and prior to the construction and installation of any portion of the Network Upgrades and ~~System Protection~~ Direct Assignment Facilities, Transmission Owner may, at its option, retain any portion of such Network Upgrades and ~~System Protection~~ Direct Assignment Facilities not cancelled or returned in accordance with Article 10.3.1(a), in which case Transmission Owner shall be responsible for all costs associated with procuring such Network Upgrades and ~~System Protection~~ Direct Assignment Facilities. To the extent that Customer has already paid Transmission Owner for any or all of such costs, Transmission Owner shall transfer such amounts to ~~Transmission Provider who then shall assess the~~

~~financial impact as defined by Section 7.8 of Attachment X.~~ the Customer. If Transmission Owner elects to not retain any portion of such facilities, Transmission Owner shall convey and make available to Customer such facilities as soon as practicable after Customer's payment for such facilities.

- 10.4 Survival of Rights.** Termination or expiration of this Agreement shall not relieve any Party of any of its liabilities and obligations arising hereunder prior to the date termination becomes effective, and each Party may take whatever judicial or administrative actions as appear necessary or desirable to enforce its rights hereunder. The applicable provisions of this Agreement will continue in effect after expiration, or early termination hereof to the extent necessary to provide for (A) final billings, billing adjustments and other billing procedures set forth in this Agreement; (B) the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect; and (C) the confidentiality provisions set forth in Article 12.

ARTICLE 11 SUBCONTRACTORS

- 11.1 Subcontractors.** Nothing in this Agreement shall prevent a Party from utilizing the services of subcontractors, as it deems appropriate, to perform its obligations under this Agreement; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services and each Party shall remain primarily liable to the other Parties for the performance of such subcontractor.

11.1.1 Responsibility of Principal. The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. In accordance with the provisions of this Agreement, each Party shall be fully responsible to the other Parties for the acts or omissions of any subcontractor it hires as if no subcontract had been made. Any applicable obligation imposed by this Agreement upon a Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

11.1.2 No Third-Party Beneficiary. Except as may be specifically set forth to the contrary herein, no subcontractor or any other party is intended to be, nor will it be deemed to be, a third-party beneficiary of this Agreement.

11.1.3 No Limitation by Insurance. The obligations under this Article 11 will not be limited in any way by any limitation of any insurance policies or coverages, including any subcontractor's insurance.

ARTICLE 12 CONFIDENTIALITY

- 12.1 Confidentiality.** Confidential Information shall include, without limitation, all information relating to a Party's technology, research and development, business affairs, and pricing, and any information supplied by a Party to another Party prior to the execution of this Agreement.

Information is Confidential Information only if it is clearly designated or marked in writing as confidential on the face of the document, or, if the information is conveyed orally or by inspection, if the Party providing the information orally informs the Party receiving the information that the information is confidential. The Parties shall maintain as confidential any information that is provided and identified by a Party as Critical Energy Infrastructure Information (CEII), as that term is defined in 18 C.F.R. Section 388.113(c).

Such confidentiality will be maintained in accordance with this Article 12. If requested by the receiving Party, the disclosing Party shall provide in writing, the basis for asserting that the information referred to in this Article warrants confidential treatment, and the requesting Party may disclose such writing to the appropriate Governmental Authority. Each Party shall be responsible for the costs associated with affording confidential treatment to its information.

- 12.1.1 Term.** During the term of this Agreement, and for a period of three (3) years after the expiration or termination of this Agreement, except as otherwise provided in this Article 12 or with regard to CEII, each Party shall hold in confidence and shall not disclose to any person Confidential Information. CEII shall be treated in accordance with Commission policies and regulations.

- 12.1.2 Scope.** Confidential Information shall not include information that the receiving Party can demonstrate: (1) is generally available to the public other than as a result of a disclosure by the receiving Party; (2) was in the lawful possession of the receiving Party on a non-confidential basis before receiving it from the disclosing Party; (3) was supplied to the receiving Party without restriction by a non-Party, who, to the knowledge of the receiving Party after due inquiry, was under no obligation to the disclosing Party to keep such information confidential; (4) was independently developed by the receiving Party without reference to Confidential Information of the disclosing Party; (5) is, or becomes, publicly known, through no wrongful act or omission of the receiving Party or Breach of this Agreement; or (6) is required, in accordance with Article 12.1.7 of this Agreement, to be disclosed by any Governmental Authority or is otherwise required to be disclosed by law or subpoena, or is necessary in any legal proceeding establishing rights and obligations under this Agreement. Information designated as Confidential Information will no longer be deemed confidential if the Party that designated the information as confidential notifies the receiving Party that it no longer is confidential.

- 12.1.3 Release of Confidential Information.** No Party shall release or disclose Confidential Information to any other person, except to its Affiliates (limited by

the Standards of Conduct requirements), subcontractors, employees, agents, consultants, or to non-Parties who may be or are considering providing financing to or equity participation with Customer, or to potential purchasers or assignees of Customer, on a need-to-know basis in connection with this Agreement, unless such person has first been advised of the confidentiality provisions of this Article 12 and has agreed to comply with such provisions. Notwithstanding the foregoing, a Party providing Confidential Information to any person shall remain primarily responsible for any release of Confidential Information in contravention of this Article 12.

12.1.4 Rights. Each Party retains all rights, title, and interest in the Confidential Information that it discloses to the receiving Party. The disclosure by a Party to the receiving Party of Confidential Information shall not be deemed a waiver by the disclosing Party or any other person or entity of the right to protect the Confidential Information from public disclosure.

12.1.5 No Warranties. By providing Confidential Information, no Party makes any warranties or representations as to its accuracy or completeness. In addition, by supplying Confidential Information, no Party obligates itself to provide any particular information or Confidential Information to another Party nor to enter into any further agreements or proceed with any other relationship or joint venture.

12.1.6 Standard of Care. Each Party shall use at least the same standard of care to protect Confidential Information it receives as it uses to protect its own Confidential Information from unauthorized disclosure, publication or dissemination. Each Party may use Confidential Information solely to fulfill its obligations to another Party under this Agreement or its regulatory requirements.

12.1.7 Order of Disclosure. If a court or a Government Authority or entity with the right, power, and apparent authority to do so requests or requires any Party, by subpoena, oral deposition, interrogatories, requests for production of documents, administrative order, or otherwise, to disclose Confidential Information, that Party shall provide the disclosing Party with prompt notice of such request(s) or requirement(s) so that the disclosing Party may seek an appropriate protective order or waive compliance with the terms of this Agreement. Notwithstanding the absence of a protective order or waiver, the Party may disclose such Confidential Information which, in the opinion of its counsel, the Party is legally compelled to disclose. Each Party will use Reasonable Efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished.

12.1.8 Termination of Agreement. Upon termination of this Agreement for any reason, each Party shall, within ten (10) Business Days of receipt of a written request from another Party, use Reasonable Efforts to destroy, erase, or delete (with such destruction, erasure, and deletion certified in writing to the requesting Party) or

return to the requesting Party any and all written or electronic Confidential Information received from the requesting Party, except that each Party may keep one copy for archival purposes, provided that the obligation to treat it as Confidential Information in accordance with this Article 12 shall survive such termination.

12.1.9 Remedies. The Parties agree that monetary damages would be inadequate to compensate a Party for another Party's Breach of its obligations under this Article 12. Each Party accordingly agrees that the disclosing Party shall be entitled to equitable relief, by way of injunction or otherwise, if the receiving Party Breaches or threatens to Breach its obligations under this Article 12, which equitable relief shall be granted without bond or proof of damages, and the breaching Party shall not plead in defense that there would be an adequate remedy at law. Such remedy shall not be deemed an exclusive remedy for the Breach of this Article 12, but shall be in addition to all other remedies available at law or in equity. The Parties further acknowledge and agree that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope. No Party, however, shall be liable for indirect, incidental, or consequential or punitive damages of any nature or kind resulting from or arising in connection with this Article 12.

12.1.10 Disclosure to FERC, its Staff or a State. Notwithstanding anything in this Article 12 to the contrary, and pursuant to 18 C.F.R. § 1b.20, if FERC or its staff, during the course of an investigation or otherwise, requests information from a Party that is otherwise required to be maintained in confidence pursuant to this Agreement, the Party shall provide the requested information to FERC or its staff, within the time provided for in the request for information. In providing the information to FERC or its staff, the Party must, consistent with 18 C.F.R. § 388.112, request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. Parties are prohibited from notifying the other Parties to this Agreement prior to the release of the Confidential Information to FERC or its staff. The Party shall notify the other Parties to the Agreement when it is notified by FERC or its staff that a request to release Confidential Information has been received by FERC, at which time any of the Parties may respond before such information would be made public, pursuant to 18 C.F.R. § 388.112. Requests from a state regulatory body conducting a confidential investigation shall be treated in a similar manner if consistent with the applicable state rules and regulations.

12.1.11 Subject to the exception in Article 12.1.10, any information that a disclosing Party claims is competitively sensitive, commercial or financial information under this Agreement shall not be disclosed by the receiving Party to any person not employed or retained by the receiving Party, except to the extent disclosure is (i) required by law; (ii) reasonably deemed by the disclosing Party to be required to be disclosed in connection with a dispute between or among the

Parties, or the defense of litigation or dispute; (iii) otherwise permitted by consent of the disclosing Party, such consent not to be unreasonably withheld; or (iv) necessary to fulfill its obligations under this Agreement or as the Regional Transmission Organization or a Local Balancing Authority operator including disclosing the Confidential Information to a regional or national reliability organization. The Party asserting confidentiality shall notify the receiving Party in writing of the information that Party claims is confidential. Prior to any disclosures of that Party's Confidential Information under this subparagraph, or if any non-Party or Governmental Authority makes any request or demand for any of the information described in this subparagraph, the Party who received the Confidential Information from the disclosing Party agrees to promptly notify the disclosing Party in writing and agrees to assert confidentiality and cooperate with the disclosing Party in seeking to protect the Confidential Information from public disclosure by confidentiality agreement, protective order or other reasonable measures.

ARTICLE 13 INFORMATION ACCESS AND AUDIT RIGHTS

- 13.1 Information Access.** Each Party shall make available to the other Parties information necessary to verify the costs incurred by the other Parties for which the requesting Party is responsible under this Agreement and carry out obligations and responsibilities under this Agreement, provided that the Parties shall not use such information for purposes other than those set forth in this Article 13.1 and to enforce their rights under this Agreement.
- 13.2 Audit Rights.** Subject to the requirements of confidentiality under Article 12 of this Agreement, the accounts and records related to the design, engineering, procurement, and construction of the Network Upgrades and ~~System Protection~~[Direct Assignment](#) Facilities shall be subject to audit during the period of this Agreement and for a period of twenty-four (24) months following the Transmission Owner's issuance of a final invoice in accordance with Article 6.4. Customer at its expense shall have the right, during normal business hours, and upon prior reasonable notice to the other Parties, to audit such accounts and records. Any audit authorized by this Article 13.2 shall be performed at the offices where such accounts and records are maintained and shall be limited to those portions of such accounts and records that relate to obligations under this Agreement.

ARTICLE 14 DISPUTES

- 14.1 Submission.** Any claim or dispute, which a Party may have against another Party, arising out of this Agreement shall be submitted for resolution in accordance with the dispute resolution provisions of the Tariff.

14.2 Rights under the Federal Power Act. Nothing in this Article 14 shall restrict the rights of any Party to file a complaint [or a petition](#) with FERC under relevant provisions of the Federal Power Act.

14.3 Equitable Remedies. Nothing in this Article shall prevent a Party from pursuing or seeking any equitable remedy available to it under Applicable Laws and Regulations, at any time, before a Governmental Authority.

ARTICLE 15 NOTICES

15.1 General. Any notice, demand or request required or permitted to be given by a Party to another Party and any instrument required or permitted to be tendered or delivered by a Party in writing to another Party may be so given, tendered or delivered, as the case may be, by depositing the same with the United States Postal Service with postage prepaid, for transmission by certified or registered mail, addressed to the Parties, or personally delivered to the Parties, at the address set out below:

To Transmission Provider:

MISO

Attn: Director, ~~Transmission Access Planning~~ [Resource Utilization](#)
720 City Center Drive
Carmel, IN 46032

To Transmission Owner:

[Minnesota Power](#)
[Vice President, Transmission & Distribution](#)
[30 West Superior Street](#)
[Duluth, MN 55802](#)

To Customer:

[Minnesota Power](#)
[Vice President, Strategy and Planning](#)
[30 West Superior Street](#)
[Duluth, MN 55802](#)

15.2 Billings and Payments. Billings and payments shall be sent to the addresses shown in Article 15.1 unless otherwise agreed to by the Parties.

15.3 Alternative Forms of Notice. Any notice or request required or permitted to be given by a Party to another Party and not required by this Agreement to be given in writing may be so given by telephone, facsimile or email to the telephone numbers and email addresses set out below:

To Transmission Provider:

MISO

Voice telephone – (317) 249-5700

Facsimile telephone – (317) 249-5358

Email address – misotap@misoenergy.org or

MISOTransmissionAccessPlanning@misoenergy.org

To Transmission Owner:Minnesota PowerDirector – System Operations, Performance & ComplianceVoice telephone – (218) 723-7414Email address-lfrisk@mnpower.com orMPTransmissioninformationNotifications@mnpower.comTo Customer:Minnesota PowerRTO Coordination ManagerVoice telephone – (218) 723-7466Email address – rnyholm@mnpower.com

- 15.4 DUNS #.** If Transmission Owner and Customer have not obtained DUNS numbers by the time this Agreement is executed, Transmission Owner and Customer will forward their DUNS numbers within five (5) Business Days of having obtained such numbers to Transmission Provider by facsimile telephone or email to the fax number or email set out below:

Transmission OwnerDUNS Number: 617232889CustomerDUNS Number: 617232889

- 15.5 Notification of In-Service Date.** Transmission Owner will serve to Transmission Provider a copy of Appendix B as forwarded to Customer on the same day to the address shown in Article 15.1, and by facsimile telephone to the numbers set out below:

To Transmission Provider:MISO

Facsimile telephone – (317) 249-5703

And copy to

MISO

Attn: Director, ~~Transmission Access Planning~~ [Resource Utilization](#)

720 City Center Drive

Carmel, IN 46032

ARTICLE 16 MISCELLANEOUS

- 16.1 Waiver.** Except as otherwise provided for in this Agreement, the failure of any Party to comply with any obligation, covenant, agreement, or condition herein may be waived by the Parties entitled to the benefits thereof only by a written instrument signed by the Parties granting such waiver. Any waiver at any time by a Party of its rights with respect to a Default under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall not be deemed a waiver or continuing waiver with respect to any subsequent Default or other matter.
- 16.2 Governing Law.** The validity, interpretation and performance of this Agreement and each of its provisions shall be governed by the laws of the state of [Minnesota](#) where [approximately 50 percent of](#) the Network Upgrades and/or ~~System Protection~~[Direct Assignment](#) Facilities referenced in Appendix A are located without regard to its conflicts of law principles.
- 16.3 Headings Not to Affect Meaning.** The descriptive headings of the various Sections and Articles of this Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms and provisions hereof.
- 16.4 Amendments and Rights Under the Federal Power Act.** Transmission Provider shall have the right to make a unilateral filing with FERC to modify this Agreement with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation under Section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder, and Transmission Owner and Customer shall have the right to make a unilateral filing with FERC to modify this Agreement pursuant to Section 206 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder; provided, however, that each Party shall have the right to protest any such filing and to participate fully in any proceeding before FERC in which such modifications may be considered. Nothing in this Agreement shall limit the rights of the Parties or of FERC under Sections 205 or 206 of the Federal Power Act and FERC's rules and regulations thereunder, except to the extent that the Parties otherwise mutually agree as provided herein.
- 16.5 Entire Agreement.** This Agreement, together with all the exhibits, constitutes the final and entire written agreement among the Parties hereto with reference to the subject matter hereof, and is a complete and exclusive statement of those terms and conditions and supersedes all prior negotiations, representations or agreements, either written or oral, with respect to the specific subject matter of this Agreement. No change or modification as to any of the provisions hereof shall be binding on any Party unless reduced to writing and approved by the duly authorized officer or agent of Customer, Transmission Owner, and Transmission Provider.
- 16.6 Counterparts.** This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

- 16.7 Binding Effect.** This Agreement and the rights and obligations hereof, shall be binding upon and shall inure to the benefit of the Parties hereto and their successors and assigns. No person or party shall have any rights, benefits or interests, direct or indirect, arising from this Agreement except the Parties hereto, their successors and authorized assigns. The Parties expressly disclaim any intent to create any rights in any person or party as a third party beneficiary to this Agreement.
- 16.8 Conflicts.** In the event of a conflict between the body of this Agreement and any attachment, appendix or exhibit hereto, the terms and provisions of the body of this Agreement shall prevail and be deemed to be the final intent of the Parties.
- 16.9 Regulatory Requirements.** Each Party's obligations under this Agreement shall be subject to its receipt of any required approval or certificate from one or more Governmental Authorities in the form and substance satisfactory to the receiving Party, or the Party making any required filings with, or providing notice to, such Governmental Authorities, and the expiration of any time period associated therewith. Each Party shall in good faith seek these other approvals as soon as is reasonably practicable.

ARTICLE 17 REPRESENTATIONS AND WARRANTIES

- 17.1 General.** Each Party hereby represents, warrants and covenants as follows with these representations, warranties, and covenants effective as to the Party during the full time this Agreement is effective:
- 17.1.1 Good Standing.** Such Party is duly organized or formed, as applicable, validity existing and in good standing under the laws of its state of organization or formation, and is in good standing under the laws of the respective state(s) of its organization as stated in the preamble of this Agreement.
- 17.1.2 Authority.** Such Party has the right, power and authority to enter into this Agreement, to become a party hereto and to perform its obligations hereunder, and this Agreement is a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms.
- 17.1.3 No Conflict.** The execution, delivery and performance of this Agreement does not violate or conflict with the organizational or formation documents, or bylaws or operating agreement, of such Party, or any judgment, license, permit or order or material agreement or instrument applicable to or binding upon such Party or any of its assets.
- 17.1.4 Consent and Approval.** That it has sought or obtained, or, in accordance with this Agreement will seek or obtain, each consent, approval, authorization or order of, or acceptance of a filing with, or notice to, any Governmental Authority with

jurisdiction concerning this Agreement, in connection with the execution, delivery and performance of this Agreement.

17.1.5 Solvency. That such Party is financially solvent.

IN WITNESS WHEREOF, the Parties have executed this Agreement in multiple originals, each of which shall constitute and be an original Agreement among the Parties.

Transmission Provider
Midcontinent Independent System Operator, Inc.

By: _____
Name: _____
Title: _____

Transmission Owner
~~{Transmission Owner}~~

Minnesota Power

By: _____
Name: _____
Title: _____

Customer
~~{Customer}~~

Minnesota Power

By: _____
Name: _____
Title: _____

Project No. _____

[Square Butte 91365462 FCA](#)

Facilities Construction Agreement
APPENDIX A
NETWORK UPGRADES, COST ESTIMATES AND RESPONSIBILITY,
TRANSMISSION CREDITS, CONSTRUCTION SCHEDULE AND MONTHLY
PAYMENT SCHEDULE

This Appendix A is a part of the Facilities Construction Agreement between Customer, Transmission Owner, and Transmission Provider. Terms used in this Appendix A with initial capitalization not defined in this Appendix A shall have the meaning set out in the Agreement

~~1.1 — Transmission Owner's [Interconnection Facilities] [Connection Facilities]~~

~~1.2~~ The upgrades required to be made by the Transmission Owner under this Agreement because of the Transmission Service Request include Direct Assignment Facilities and Network Upgrades, as defined in Module B and Attachment N of the Tariff. The Network Upgrades under this Agreement are governed by Module B and Attachment N of the Tariff.

1.1 Network Upgrades to be installed by Transmission Owner.

1.21.1 Transmission Owner Substation Network Upgrades:

~~1.2.2 — Transmission Owner Transmission Line Network Upgrades:~~

To modernize the terminals of the existing Square Butte HVDC Line and implement the latest voltage source converter ("VSC") HVDC technology, new buildings and electrical infrastructure need to be constructed on a new site near the existing Center and Arrowhead HVDC terminals. Due to the specialized nature of the technology, the new VSC HVDC converter stations will be delivered as turnkey projects by the original equipment manufacturer ("OEM"). The scope of supply for the HVDC OEM will include the relocated converter stations, including valves, converter transformers, smoothing reactors, DC equipment, AC circuit breakers, control & protection, and all associated facilities. The new VSC HVDC converter stations will be designed to interconnect at 345 kV on the AC system side. To accommodate interconnection of the new VSC HVDC converter stations, new AC interconnection facilities will be constructed including new 345/230 kV substations, 345 kV transmission lines, and 230 kV transmission lines. New AC interconnection facilities are listed below.

In Minnesota:

- Construction of a new St. Louis County 345/230 kV Substation located less than one mile west of the Arrowhead Substation
- Construction of a new 345 kV transmission line from the HVDC converter station to the St. Louis County Substation
- Construction of two parallel 230 kV lines from the St. Louis County Substation to the existing Arrowhead Substation
- At Arrowhead Substation, the two new 230 kV lines will be interconnected to the existing HVDC Pole 1 and Pole 2 bus positions, which will be rebuilt with higher-

capacity bus and electrical equipment to accommodate the increased HVDC capacity.

- A short portion of the existing ± 250 kV HVDC Line in Minnesota will be reconfigured to terminate at the new HVDC converter station.

In North Dakota:

- Establishment of a new Nelson Lake 230 kV Switching Station to tie together the existing Minnesota Power Square Butte East – Bison 230 kV Line with the existing Great River Energy Square Butte – Stanton 230 kV Line.
- Construction of a second 230 kV circuit between Nelson Lake and Square Butte East using existing double-circuit capable structures.
- Addition of a 230 kV breaker at the Square Butte East Substation to accommodate the second Nelson Lake – Square Butte East 230 kV circuit
- Expansion of the Nelson Lake 230 kV Switching Station to add a 345/230 kV transformer and 345 kV line entrance.
- Construction of a new 345 kV line from Nelson Lake to the new HVDC converter station
- Construction of a new 345 kV substation at the new HVDC converter station site
- A portion of the existing ± 250 kV HVDC Line in North Dakota will need to be reconfigured to terminate at the new HVDC converter station.

Additional equipment upgrades may be deemed necessary by the Transmission Owner or the HVDC OEM during the specification, detailed design, and engineering phase of the project.

1.2.1.2 Transmission Owner Transmission Line Network Upgrades:

The upgrades necessary to increase the capacity of the HVDC transmission line from 550 MW to 900 MW are likely to consist primarily of replacing existing structures with taller structures to increase conductor-to-ground clearance at the higher operating temperature. A short segment of the transmission line with a smaller conductor will need to be rebuilt with a larger conductor.

1.1.3 Transmission Owner Transmission Line Permitting:

Due to the relocation of the converter stations and the length of new AC interconnection facilities required to re-connect to the existing system, the HVDC Modernization Project will require state-level permits in both Minnesota and North Dakota. In Minnesota, a Certificate of Need and Route Permit will be required from the State of Minnesota. In North Dakota, a Certificate of Corridor Compatibility and a Route Permit will be required. Minnesota Power will obtain the necessary permits in both states

1.2.1.4 Cost Estimates and Responsibility.

The estimated cost for these network upgrades is \$878,000,000. These costs of upgrades are shared by the Transmission Owner and Customer. **The estimated cost from Customer with Transmission Service Request 91365462 to Transmission Owner is \$167,000,000.** The Customer(s) hereby acknowledge and agree that the costs, expenses, and charges set out in Table 1 are only an estimate and that the Customer(s) shall pay the

Transmission Owner for their allocated amounts for all costs, expenses, and charges. Updated estimates will be provided annually by the Transmission Owners on request from the Customer.

This is detailed below in Table 1 and is subject to applicable Tax Gross.

Table 1: Network Upgrades Cost Details

<u>HVDC 900 MW Upgrade</u>	<u>Total Estimated Cost</u>	<u>Cost Assigned to Transmission Service Requests #91365462</u>
<u>Converter Station Replacement</u>	<u>\$705,000,000</u>	<u>\$123,000,000</u>
<u>Interconnections to AC System</u>	<u>\$115,000,000</u>	<u>\$11,000,000</u>
<u>Transmission Line Modification</u>	<u>\$58,000,000</u>	<u>\$33,000,000</u>
<u>Internal & Professional Services</u>	<u>Included</u>	<u>Included</u>
<u>Total (in 2022 dollars)</u>	<u>\$878,000,000</u>	<u>\$167,000,000</u>

1.2.4.1 Major Material List of Transmission Owner’s Network Upgrades See Exhibit C2

~~1.3~~ ~~System Protection~~ 1.2 Direct Assignment Facilities - None.

1.43 **First Equipment Order (including permitting).** See Table 2 below.

1.43.1. **Permitting And Land Rights – Transmission Owner Network Upgrades** See Section 1.8.

1.54 **Transmission Credits.** See Article 3.2.2 of the Agreement.

1.65 **Construction Schedule.** Where applicable, construction of the Transmission Owner ~~[Interconnection Facilities]~~ ~~[Connection Facilities]~~, Network Upgrades and Special Protection Facilities is scheduled as follows and will be periodically updated as necessary:

Table ~~1~~ 2: Transmission Owner Construction Activities

~~MILESTONE~~ ~~NUMBER~~ <u>Milestone</u> <u>e Number</u>	<u>Milestone</u> Description	~~START~~ ~~DATE~~ <u>Start</u> <u>Date</u>	~~END~~ ~~DAT~~ <u>E</u>
---	------------------------------	---	--

1.	<u>Facilities Construction Agreement Executed.</u>	<u>Aug/Sep-2023</u>
2.	<u>Minnesota Certificate of Need & Route Permit Applications Filed.</u>	<u>Jun-2023</u>
3.	<u>North Dakota Corridor Compatibility and Route Permit Applications Filed.</u>	<u>Oct-2023</u>
4.	<u>Begin Front End Engineering & Design with HVDC OEM.</u>	<u>Jan-2024</u>
5.	<u>Major Permits Received in Minnesota & North Dakota.</u>	<u>Jul-2024</u>
6.	<u>Order Long Leadtime Equipment for AC Substations.</u>	<u>Nov-2024</u>
7.	~~Initial Synchronization~~ <u>Date Clearing Begins.</u>	<u>Jan-2025</u>
8.	<u>Construction of AC Interconnection Facilities Begins.</u>	<u>May-2025</u>
9.	<u>Construction of HVDC Transmission Line Upgrades Begins.</u>	<u>Aug-2025</u>
10.	<u>Receive Firm Proposal from HVDC OEM.</u>	<u>Aug-2026</u>
11.	<u>Execute Firm EPC Contract with HVDC OEM.</u>	<u>Oct-2026</u>
12.	<u>Construction of HVDC Converter Stations Begins.</u>	<u>Oct-2027</u>
13.	~~Commercial Operation~~ <u>In-Service Date.</u>	<u>Apr-2030</u>

Note: ~~Construction~~

The construction schedule assumes that the Transmission Owner has obtained final authorizations and security from Customer and all necessary permits from Governmental Authorities as necessary prerequisites to commence construction of any of the Network Upgrades and Special Protection Facilities ~~or Transmission Owner [Interconnection Facilities] [Connection Facilities].~~

1.76 Payment Schedule.

1.76.1 Timing of and Adjustments to Customer's Payments and Security.

1.76.2 Monthly Payment Schedule. ~~The Customer's payment schedule is as follows.~~

Table ____: Customer's Payment/Security Obligations for Following approval of the state permits set forth in Section 1.2.3, in accordance with Attachment N, the Customer will begin paying a monthly dollar assessment. Monthly payments by the Customer will continue until Transmission Owner has recovered the cost of all Directly Assigned Facilities and Transmission Owner Network Upgrades ~~and System Protection Facilities.~~

~~MILESTONE NUMBER~~	~~DESCRIPTION~~	~~DATE~~
~~*~~		
	~~-Initial Synchronization Date~~	
	~~-Commercial Operation Date~~	

~~Note: Customer's payment or provision of security as provided in this Agreement operates as a condition precedent to Transmission Owner's obligations to construct any Network Upgrades or System Protection Facilities, and failure to meet this schedule will constitute a Breach pursuant to Article 9.1 of this Agreement.~~

A Customer that fails to make payments when due will be given a Breach notice. Unless the Breach is cured in accordance with Article 9 of this agreement, the Transmission Owner is relieved from performing under this Agreement. Failure by any Customer to comply with Article 9.2.2(A) or 9.2.2(B) relative to such Breach may, pursuant to Article 9.2.2 of the Agreement, result in termination of the Agreement as to that Customer.

1.86.3 Security Amount.

1.6.4.1 Except as set forth under Section 1.7.3.1, Security shall be composed of either a Guaranty, a letter of credit as described in Section 1.7.4 or a cash escrow as described in Section 1.7.4.2, at Customer's option, or a combination of these options as long as the total amount of Security is not less than the amount then required. Notwithstanding the foregoing, the Guaranty amount may not comprise more than fifty percent (50%) of the overall total amount of Security, provided that if Customer has delivered a notice reducing the amount of Security required pursuant to Section 1.7.7, then the Guaranty may comprise up to 100% of the overall total amount of Security at the Guarantor's option. Customer shall be (i) permitted from time to time to change the form and combination of such posted Security provided that no Event of Default with respect to Customer then exists so long as Transmission Owner is provided timely Notice of the change, and (ii) required, if Customer has provided Security, or any portion thereof, in the form of a Guaranty, if the entity or entities providing a Guaranty no longer qualify as a

Guarantor, Customer shall within ten (10) Business Days of Transmission Owner's Notice to do so (A) replace such Guaranty with either a Guaranty from an entity or entities meeting the requirements as a Guarantor and/or (B) deliver a letter of credit or performance bond as described in Section 1.7.4.3 and/or (C) supply a cash escrow as described in Section 1.7.4.2, at Customer's option, in any case, in the aggregate amount of the then applicable Security, less the aggregate amount of any prior draws on such Security. Upon receipt of such substitute Security, any such Guaranty shall be deemed cancelled.

1.6.4.2 If Customer elects to utilize a cash escrow as Security, it shall establish an interest-bearing escrow account with a commercial bank or other mutually acceptable escrow agent as escrow agent, and the account shall name Transmission Owner as the beneficiary for the duration of the existence of the escrow account. The escrow account shall be in United States currency, and funds in the account may be invested in a money-market fund, short-term treasury obligations, investment-grade commercial paper or other investment-grade investments with maturities of three (3) months or less. All income and interest earned on the accounts held in the escrow account shall accrue for the benefit of the Customer, and Customer may withdraw the income and interest earned at any time as long as the balance in the account after the withdrawal meets the minimum funding requirements of this Section 1.7.4.2. The escrow agreement shall require the escrow agent to notify Transmission Owner of the balance in the escrow account from time to time. The escrow agreement governing the account shall include terms that (i) prohibit termination of the account prior to establishment of alternative Security that satisfies all the requirements of this FCA; (ii) require Notice of no less than sixty (60) Days by the escrow agent to Transmission Owner prior to any termination of the account; and (iii) allow Transmission Owner to draw the entire balance in the escrow account up to the amount of the Security if Security has not been replaced in accordance with this Agreement at least five (5) Business Days prior to the expiration or termination of the escrow account, and Transmission Owner shall hold such amounts in lieu of escrow until such time as the Security has been replaced, at which time the funds shall be returned to Customer. At the end of the Term, any balance remaining in the escrow account shall be returned or released to Customer.

1.6.4.3 In conjunction with or instead of a Guaranty or cash security as provided in Section 1.7.4.2, Customer may provide Security in the form of an irrevocable letter of credit in a commercially reasonable form and otherwise in compliance with the requirements of this Section 1.7.4 and in form and substance acceptable to the Issuer (as defined below) (the "LOC"). The LOC shall be issued by a state or federally chartered

commercial bank which issues similar letters of credit in the ordinary course of its business and that (i) has an unsecured bond rating or long-term senior unsecured debt rating equivalent to A- or better as determined by at least two (2) rating agencies, one of which must be either S&P or Moody's, or, if these are not available, CAMEL ratings from the FDIC or OCC used in the banking industry no less than a 3 and (ii) has a minimum of One Hundred Million Dollars (\$100,000,000) in capital (the "Issuer"). The LOC must: (i) be issued for a minimum term of three hundred and sixty (360) Days, and, where permitted by the Issuer, shall be automatically extended for a period of one (1) year on each successive expiration date unless, at least ninety (90) Days before the current expiration date, the Issuer notifies Customer and Transmission Owner by certified mail that the Issuer has decided not to extend the letter of credit; (ii) provide that draws shall be payable upon presentation of a sight draft executed by an officer of Transmission Owner substantially in the form approved by Transmission Owner; and (iii) expressly permit partial and multiple draws. Any unused portion of the letter of credit shall be available, regardless of renewal, through the then current expiration date. Customer may replace the letter of credit with another Issuer which includes a provision for at least ninety (90) Days advance Notice to Transmission Owner and shall cause the renewal or extension of the LOC meeting the criteria set forth in this Section 1.7.4.3 within thirty (30) days prior to the expiration or cancellation of the then current LOC, and failure to do so shall authorize Transmission Owner to draw immediately upon the then current LOC. Transmission Owner shall then, at Customer's cost and with Customer's funds, place the amounts so drawn in an interest bearing escrow account in accordance with Section 1.7.4.2 above, until and unless Customer provides a substitute form of such security meeting the requirements of this Section 1.7.4. Security in the form of an irrevocable standby letter of credit shall be governed by the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Brochure No. 500 or as otherwise required by the Issuer of the LOC.

1.6.4.4 Customer shall provide Guarantor's annual audited financial statements to Transmission Owner within one hundred twenty (120) days after the end of each calendar year. Transmission Owner shall have the right to monitor the financial condition of Customer, Guarantor, and the Issuer to the extent set forth herein, and Customer shall provide written Notice to Transmission Owner within five (5) Business Days of becoming aware that (i) the Issuer does not satisfy the requirements of the second sentence of Section 1.7.4.3, (ii) ALLETE, Inc. or an affiliate is the Guarantor, such entity does not, collectively, have a tangible net worth of at least Five Hundred Million Dollars \$500,000,000, or (iii) if the Guarantor is not ALLETE, Inc. or an affiliate such Person does not have

an Investment Grade Credit Rating, and in such event Customer shall provide alternative Security as soon as practicable that complies with this Section 1.7.4.4 and in no event later than thirty (30) Days after becoming aware of the Issuer's or a Guarantor's failure to meet the requirements of this Section 1.7.

1.6.5 Release of Security. Promptly following the termination of this FCA and the completion of all Customer's obligations under this FCA, Transmission Owner shall release the Security (including any accumulated interest, if applicable) to Customer.

1.6.6 Permitted Draws; Effects of Draws. In addition to any other remedy available to it, Transmission Owner may, before or after termination of this FCA, draw against the Security to satisfy any undisputed obligations of Customer to Transmission Owner arising under this Agreement (including, without limitation, the payment of Availability Liquidated Damages, if any, or any indemnification obligations) which Customer has not otherwise paid or performed when due, after any required Notice and opportunity to cure. If Transmission Owner draws against the Security and Customer subsequently disputes Transmission Owner's entitlement to any portion of the funds drawn, neither Transmission Owner's draw, the Issuer's payment under the LOC, nor Customer's replenishment of the Security or reimbursement of the Issuer or escrow agent shall constitute a waiver of Customer's rights to seek recovery of any amount disputed. To the extent Transmission Owner elects to draw upon the Security to satisfy obligations that otherwise constitute, or might constitute, an Event of Default by Customer and entitle Transmission Owner to terminate this Agreement, Transmission Owner's draw against the Security shall be deemed a cure of such Event of Default and shall waive Transmission Owner's right to terminate in that respect. With respect to any Event of Default by Seller that remains uncured and which could be cured by payment of an undisputed amount to Transmission Owner, Transmission Owner shall first draw upon the Security to cure the Event of Default, and only if such Security is insufficient to cure the Event of Default shall any right of termination which Transmission Owner may otherwise have be exercised by Transmission Owner.

1.6.7 Reduction in Security. Transmission Owner may, by Notice from time to time to Customer, waive or reduce the amount of security required to be posted hereunder in consideration of an Affiliate of Transmission Owner having a minority ownership interest in Customer.

1.7 **Permits, Licenses and Authorizations.**

Transmission Owner will be responsible for all permits, licenses and authorizations.

Facilities Construction Agreement
APPENDIX B
NOTIFICATION OF COMPLETED CONSTRUCTION

This Appendix B is a part of the Facilities Construction Agreement among Customer, Transmission Owner, and Transmission Provider. Where applicable, when Transmission Owner has completed construction of the Transmission Owner ~~[Interconnection Facilities]~~ ~~[Connection Facilities]~~, Network Upgrades and/or ~~System Protection~~ Direct Assignment Facilities, Transmission Owner shall send notice to Customer and Transmission Provider, in substantially the form following:

[Date]

MISO

Attn: Director, ~~Transmission Access Planning~~ Resource Utilization
720 City Center Drive
Carmel, IN 46032

Customer Address

Phone:

Fax:

Email:

Re: Completion of Network Upgrade/~~System Protection~~ Direct Assignment Facilities

Dear [Name or Title]:

This letter is sent pursuant to the Facilities Construction Agreement among [Transmission Owner], [Customer], and MISO, dated _____, 20__.

On [Date], Transmission Owner completed to its satisfaction all work on the Network Upgrades and/or ~~System Protection~~ Direct Assignment Facilities required to facilitate the safe and reliable ~~interconnection and~~ operation of Customer's Facility. Transmission Owner confirms that the Network Upgrade and/or ~~System Protection~~ Direct Assignment Facilities are in place.

Thank you.

[Signature]

[Transmission Owner Representative]

Facilities Construction Agreement

APPENDIX C Exhibits

This Appendix C is a part of the Facilities Construction Agreement among Customers,
Transmission Owner, and Transmission Provider.

Exhibit C1.

Transmission Owner ~~Site Map~~ Network Upgrade One Line

CUI//CEII MATERIAL – DO NOT RELEASE

CUI//CEII MATERIAL – DO NOT RELEASE

Exhibit C2**Site Plan****Exhibit C3****~~Transmission Line and/or Substation Network Upgrades and System Protection Facilities Plan & Profile~~****Exhibit C4****Estimated Cost of Transmission line and/or Substation Network Upgrades and ~~System Protection~~ Direct Assignment Facilities**

The total estimated cost for the Network Upgrades for HVDC Converter Station, connections to AC System, Transmission Line Modifications is \$878,000,000.

The details of the cost for customer with Transmission Service Request #91365462 is shown below in Table 1, Table 2, Table 3.

Detailed Cost Estimate of Facilities to be Constructed by Transmission Owner

The anticipated costs of modernizing and upgrading the HVDC converter stations are shown in Table 1. The initial estimated converter station replacement base cost was provided by the HVDC OEM. If design assumptions change significantly during the development of the project, the base cost shown in Table 1 may change.

Table 1: Converter Station Replacement Cost Breakdown

<u>HVDC 900 MW Upgrade</u>		<u>Location Estimated Cost</u>	Facilities Cost Assigned to be Constructed by Transmission Owner Service Requests ##91365462	Estimate in Dollars
<u>Converter Station Base Cost</u>		<u>\$705,000,000</u>	<u>\$123,000,000</u>	
<u>Internal & Professional Services</u>		<u>(Included)</u>	<u>(Included)</u>	
<u>Contingency - Converter Station</u>		<u>(Included)</u>	<u>(Included)</u>	
<u>AFUDC - Converter Station</u>		<u>(Included)</u>	<u>(Included)</u>	
	<u>Total: (in 2022dollars)</u>	<u>\$705,000,000</u>	<u>\$123,000,000</u>	

The anticipated costs of AC Interconnection Facilities necessary to connect the relocated VSC HVDC converter stations to the existing AC transmission system are shown in Table 2. If design

assumptions change significantly during the development of the project, the base costs shown in Table 2 may change.

Table 2: AC Interconnection Facilities Cost Breakdown

<u>HVDC 900 MW Upgrade</u>	<u>Estimated Cost</u>	<u>Cost Assigned to Transmission Service Requests #91365462</u>
<u>Minnesota AC Interconnections</u>	<u>\$55,000,000</u>	<u>\$5,000,000</u>
<u>North Dakota AC Interconnections</u>	<u>\$40,000,000</u>	<u>\$3,000,000</u>
<u>Nelson Lake 230 kV Substation</u>	<u>\$20,000,000</u>	<u>\$3,000,000</u>
<u>Total (in 2022dollars)</u>	<u>\$115,000,000</u>	<u>\$11,000,000</u>

Table 3: Transmission Line Modifications Cost Breakdown

<u>HVDC 900 MW Upgrade</u>	<u>Estimated Cost</u>	<u>Cost Assigned to Transmission Service Requests #91365462</u>
<u>HVDC T-Line 900 MW Upgrade</u>	<u>\$58,000,000</u>	<u>\$33,000,000</u>
<u>HVDC T-Line AFUDC</u>	<u>(Included)</u>	<u>(Included)</u>
<u>HVDC T-Line Contingency</u>	<u>(Included)</u>	<u>(Included)</u>
<u>Total (in 2022dollars)</u>	<u>\$58,000,000</u>	<u>\$33,000,000</u>

The anticipated costs of Transmission Line Modifications are shown in Table 3. The upgrade cost estimate is based on preliminary transmission structural engineering evaluations. If additional HVDC transmission line modifications or scope changes are found to be necessary during the development of the project, the costs presented in Table 3 may be impacted.

TAB E

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Case Name) Docket No.

PROTECTIVE AGREEMENT

1. This Protective Agreement shall govern the access to, and use of all Privileged Materials and Critical Energy Infrastructure Information (“CEII”) produced by, or on behalf of, any Participant.
2. Notwithstanding any order terminating this proceeding, this Protective Agreement shall become effective as of the date the attached Non-Disclosure Certificate is executed and shall remain in effect until specifically modified or terminated by the Federal Energy Regulatory Commission (“Commission”).
3. Definitions – For purposes of this Protective Agreement:
 - (a) The meaning of the term “Participant” shall be as defined at 18 C.F.R. § 385.102(b).
 - (b) The term "Privileged Materials" includes those materials, and information contained therein, which customarily are treated as sensitive or proprietary, which are not available to the public, and which, if disclosed publicly, would subject the Participant or its customers to risk of competitive disadvantage or other business injury. Privileged Materials may include: (A) materials designated by a Participant as “Privileged Materials”; (B) any information contained in or obtained from such designated materials in (A); (C) any other materials which are made subject to this Protective Agreement by the Presiding Judge or the Chief Judge, by the Commission, by any court or other body having appropriate authority, or by agreement of the Participants; (D) notes of Privileged Materials (notes means memorandum, summaries, or other documents produced by a Participant or Reviewing Representative as a part of their review of the Privileged Materials) (“Notes of Privileged Materials”); and (E) copies of Privileged Materials. The Participant producing the Privileged Materials shall physically mark them on each page as "PRIVILEGED MATERIALS" or with words of similar import as long as the term "Privileged" is included in that designation to indicate that they are Privileged Materials.

- (c) The meaning of the term “CEII” shall be as defined at 18 C.F.R. § 388.113(c). In producing a document that contains CEII, a Participant shall label the document in conformance with the requirements of this Protective Agreement, including but not limited to the requirements of Paragraphs 12 and 20 hereof. For the purposes of this Protective Agreement, documents that are labeled in conformance with the requirements of Paragraphs 12 and 20 are defined as “Designated CEII.”
 - (d) The term “Non-Disclosure Certificate” shall mean the certificate annexed hereto by which Reviewing Representatives who have been granted access to Designated CEII or Privileged Materials shall certify their understanding that such access is provided pursuant to the terms and restrictions of this Protective Agreement, and that such Reviewing Representatives have read the Protective Agreement and agree to be bound by it. All executed Non-Disclosure Certificates shall be served on all Participants on the official service list maintained by the Secretary of the Commission in this proceeding.
 - (e) The term “Reviewing Representative” shall mean a person who has signed a Non-Disclosure Certificate and who is:
 - (1) a member of the Commission Trial Staff;
 - (2) an attorney who has made an appearance in this proceeding for a Participant;
 - (3) attorneys, paralegals, and other employees associated for purposes of this proceeding with an attorney who has made an appearance in this proceeding for a Participant;
 - (4) an expert or an employee of an expert retained by a Participant for the purpose of advising, preparing for, submitting evidence, or testifying in this proceeding;
 - (5) a person designated as a Reviewing Representative by order of the Presiding Judge or the Chief Judge or the Commission; or
 - (6) employees or other representatives of Participants with significant responsibility for this docket.
4. All Privileged Materials and Designated CEII shall be made available under the terms of this Protective Agreement only to Participants and only through their Reviewing Representatives as provided in Paragraphs 6–10.
5. All Privileged Materials and Designated CEII shall remain available to Participants until an order terminating this proceeding becomes no longer subject to judicial review, or

another date specifically designated by the Commission or the Presiding Judge. If requested to do so in writing after that date, the Participants shall, within fifteen (15) days of such request, return the Privileged Materials and the Designated CEII to the Participant that produced them, or shall destroy the materials, except that copies of filings, official transcripts and exhibits in this proceeding that contain Privileged Materials or Designated CEII, and Notes of Privileged Material may be retained, if they are maintained in accordance with Paragraph 6 below. Within such time period each Participant, if requested to do so, shall also submit to the producing Participant an affidavit stating that, to the best of its knowledge, all Privileged Materials, Designated CEII and all Notes of Privileged Materials have been returned or have been destroyed or will be maintained in accordance with Paragraphs 6-7. To the extent Privileged Materials and Designated CEII are not returned or destroyed, they shall remain subject to the Protective Agreement or any superseding protective agreement or protective order.

6. All Privileged Materials and Designated CEII shall be maintained by the receiving Participant or Reviewing Representatives in a secure place. Access to those materials shall be limited to those Reviewing Representatives specifically authorized pursuant to Paragraphs 8–9. The Secretary shall place any Privileged Materials and Designated CEII filed with the Commission in a non-public file. By placing such documents in a non-public file, the Commission is not making a determination of any claim of privilege or whether the materials actually meet the definition of CEII. The Commission retains the right to make determinations regarding any claim of privilege and the discretion to release information necessary to carry out its jurisdictional responsibilities. For documents submitted to Commission Trial Staff (“Staff”), Staff shall follow the notification procedures of 18 C.F.R. § 388.112 before making public any Privileged Materials or Designated CEII.

7. All Privileged Materials and Designated CEII shall be treated as confidential by each Participant and by the Reviewing Representative in accordance with the Non-Disclosure Certificate executed pursuant to Paragraph 9 and shall be afforded the same protections that the Participant or Reviewing Representative affords to its own similarly situated confidential information. A Participant or Reviewing Representative shall promptly notify the other Participants if it has cause to believe that the Privileged Materials or Designated CEII have been disclosed, including if that disclosure was inadvertent or the result of a breach. All Privileged Materials and Designated CEII shall not be used except as necessary for the conduct of this proceeding, nor shall they be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of this proceeding and who needs to know the information in order to carry out that person's responsibilities in this proceeding.

8. (a) If a Reviewing Representative’s scope of employment includes the marketing of energy, the direct supervision of any employee(s) whose duties include the marketing of energy, or the provision of consulting services to any person whose duties include the marketing of energy, such Reviewing Representative may not use information contained in any Privileged Materials or Designated CEII to give any Participant or any

competitor of any Participant a commercial advantage.

(b) In the event that a Participant wishes to designate as a Reviewing Representative a person not described in Paragraph 3(e) above, the Participant shall seek agreement from the Participant providing the Privileged Materials or Designated CEII. If an agreement is reached, that person shall be a Reviewing Representative pursuant to Paragraph 3(e) above with respect to those materials. If no agreement is reached, the Participant shall submit the disputed designation to the Presiding Judge for resolution.

9. (a) A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Privileged Materials or Designated CEII pursuant to this Protective Agreement unless that person has first executed a Non-Disclosure Certificate; provided, that if an attorney is a Reviewing Representative, the paralegals, secretarial and clerical personnel under the attorney's instruction, supervision or control need not execute a Non-Disclosure Certificate. A copy of each Non-Disclosure Certificate shall be provided to counsel for the Participant 3 days prior to disclosure of any Privileged Material or Designated CEII to that Reviewing Representative, thus providing an opportunity to object to the disclosure.

(b) Attorneys qualified as Reviewing Representatives shall be responsible for ensuring that persons under their supervision or control comply with this Protective Agreement.

10. Any Reviewing Representative may disclose Privileged Materials or Designated CEII to any other such person as long as the disclosing person and the receiving person both have executed a Non-Disclosure Certificate. In the event that any Reviewing Representative to whom the Privileged Materials or Designated CEII is disclosed ceases to be engaged in this matter or is employed or retained for a position whose occupant is not qualified to be a Reviewing Representative under Paragraph 3(e), access to Privileged Materials or Designated CEII by that person shall be terminated. Even if no longer engaged in this proceeding, every person who has executed a Non-Disclosure Certificate shall continue to be bound by the provisions of this Protective Agreement and the certification.

11. Subject to Paragraphs 17-19, the Presiding Judge or the Chief Judge or the Commission shall resolve any disputes arising under this Protective Agreement. Prior to presenting any dispute under this Protective Agreement to the Presiding Judge or the Chief Judge or the Commission, the parties to the dispute shall use their best efforts to resolve it. Any Participant that contests the designation of materials as Privileged shall notify the Participant that provided the Privileged Materials by specifying in writing the basis for its objection. This Protective Agreement shall automatically cease to apply to such materials five (5) business days after the notification is made unless the designator, within said 5-day period, files a motion with the Presiding Judge or the Chief Judge or the Commission, with supporting affidavits, demonstrating that the materials should continue to be privileged. In any challenge to the designation of materials as Privileged, the burden of proof shall be on the Participant seeking protection. If the Presiding Judge or the Chief

Judge or the Commission finds that the materials at issue are not entitled to privilege, the procedures of Paragraphs 17-19 shall apply. The procedures described in this Paragraph shall not apply to materials designated by a Participant as CEII. Materials so designated shall remain privileged and subject to the provisions of this Protective Agreement, unless a Participant requests and obtains a determination from the Commission's Critical Energy Infrastructure Information Coordinator that such materials need not remain as Designated CEII.

12. All copies of all documents reflecting Privileged Materials, including the portion of the hearing testimony, exhibits, transcripts, briefs and other documents, which refer to Privileged Materials, shall be filed and served in sealed envelopes or other appropriate containers endorsed to the effect that they are sealed pursuant to this Protective Agreement. Such documents shall be marked "PRIVILEGED MATERIALS" and shall be filed under seal and served under seal upon the Presiding Judge and all Reviewing Representatives who are on the service list. Such documents containing CEII shall be additionally marked "CONTAINS CUI//CEII MATERIAL – DO NOT RELEASE." For anything filed under seal, redacted versions or, where an entire document is privileged or confidential, a letter indicating such, will also be filed with the Commission and served on all Participants on the service list and the Presiding Judge. Counsel for the producing Participant shall provide to all Participants who request the same, a list of Reviewing Representatives who are entitled to receive such materials. Counsel shall take all reasonable precautions necessary to assure that Privileged Materials and Designated CEII are not distributed to unauthorized persons.

13. If any Participant desires to include, utilize or refer to any Privileged Materials or Designated CEII or information derived therefrom in testimony or exhibits during the hearing in these proceedings in such a manner that might require disclosure of such material to persons other than Reviewing Representatives, such Participant shall first notify both counsel for the disclosing Participant and the Presiding Judge of such desire, identifying with particularity each of the Privileged Materials or Designated CEII. Thereafter, use of such Privileged Material or Designated CEII will be governed by procedures determined by the Presiding Judge.

14. Nothing in this Protective Agreement shall be construed as precluding any Participant from objecting to the use of Privileged Materials or Designated CEII on any legal grounds.

15. Nothing in this Protective Agreement shall preclude any Participant from requesting the Presiding Judge, the Chief Judge, the Commission, or any other body having appropriate authority, to find that this Protective Agreement should not apply to all or any materials previously designated as Privileged Materials or CEII pursuant to this Protective Agreement.

16. This Protective Agreement may be modified only by mutual agreement among Participants that have signed Non-Disclosure Certificates. This Protective Agreement may be replaced and superseded by a protective order issued by the Presiding Judge, the Chief

Judge, or the Commission.

17. Nothing in this Protective Agreement shall be deemed to preclude any Participant from independently seeking, through discovery in any other administrative or judicial proceeding, Privileged Materials or Designated CEII produced by any Participant under this Protective Agreement.

18. None of the Participants waives the right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Privileged Materials or Designated CEII.

19. The contents of Privileged Materials or Designated CEII or any other form of information that copies or discloses Privileged Materials or Designated CEII shall not be disclosed to anyone other than in accordance with this Protective Agreement and shall be used only in connection with the Participants' review of these proceedings. Any violation of this Protective Agreement and of any Non-Disclosure Certificate executed hereunder shall constitute a violation of an order of the Commission.

20. All Privileged Material or Designated CEII provided by Participants that is filed with the Commission, submitted to a Presiding Judge, or submitted to any Commission personnel or any other judicial or administrative body, must comply with the Commission's *Notice of Document Labelling Guidance for Documents Submitted to or Filed with the Commission or Commission Staff*, as issued on April 14, 2017 (82 Fed. Reg. 18632 (April 20, 2017)).

21. The provisions of 18 C.F.R. § 388.112 and 18 C.F.R. § 388.113 shall apply to any requests under the Freedom of Information Act (5 U.S.C. § 552) for Privileged Materials or Designated CEII in the files of the Commission.

IN WITNESS WHEREOF, Midcontinent Independent System Operator, Inc. has caused its authorized representative to execute this Protective Agreement.

Midcontinent Independent System Operator, Inc.

By: _____

Printed Name: _____

Title: _____

Date: _____

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Case Name _____) **Docket No.** _____

NON-DISCLOSURE CERTIFICATE

I hereby certify my understanding that access to Privileged Materials or Designated CEII is provided to me pursuant to the terms and restrictions of the Protective Agreement in this proceeding, that I have been given a copy of and have read the Protective Agreement, and that I agree to be bound by it. I understand that the contents of the Privileged Materials or Designated CEII, any notes or other memoranda, or any other form of information that copies or discloses Privileged Materials or Designated CEII shall not be disclosed to anyone other than in accordance with that Protective Agreement. I acknowledge that a violation of this certificate constitutes a violation of an order of the Federal Energy Regulatory Commission.

By: _____

Printed Name: _____

Title: _____

Representing: _____

Date: _____